Supreme Court, U. S.
FILED
MAY 1 1975
MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

Number 74-54

TRANSAMERICAN FREIGHT LINES, INC.,
Petitioner,

vs.

BRADA MILLER FREIGHT SYSTEM, INC., et al.,
Respondents.

ON WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 2, 1974
CERTIORARI GRANTED MARCH 17, 1975

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DOCKET ENTRIES

United States District Court for the
Southern District of Illinois
Southern Division

No. 4519

Sandra Wear,

Plaintiff,

vs.

Brada Miller Freight System, Inc., and Transamerican Freight Lines, Inc.

Transamerican Freight Lines, Inc.,

Cross-Plaintiff,

vs.

Brada Miller Freight System, Inc.,

Cross-Defendant.

Brada Miller Freight System, Inc.,

Cross-Plaintiff,

vs.

Transamerican Freight Lines, Inc.,

Cross-Defendant.

Date	Proceedings
1971	
Sept. 23	Amended Cross-Claim of Deft. Transamerican Freight Lines, Inc., Against Defendant Brada Miller Freight System, Inc., filed.

Dec. 1 Answer of Deft. Brada Miller Freight System to Amended Crossclaim of Deft. Transamerican Freight Lines, filed.

1973

Feb. 23 Motion of Defendant Brada Miller Freight System, Inc., for Summary Judgment against Transamerican Freight Lines, Inc., filed.

Feb. 23 Memorandum of Law in support of Motion of Brada Miller Freight System Inc., for Summary Judgment, filed.

Apr. 4 Parties present in court with their respective counsel, Motion of Brada Miller Freight System, Inc., for Summary Judgment heard. Taken under advisement. (Poos, Judge)

Apr. 25 Opinion of Court filed—Ordered that Motion of Brada Miller for Summary Judgment against Defendant Transamerican Freight Lines, Inc., is granted. See Order.

May 23 Notice of Appeal of Cross-Claimant Transamerican Freight Lines, Inc., filed.

United States Court of Appeals
For the Seventh Circuit

No. 73-1773

Sandra Wear,

Plaintiff,

vs.

Brada Miller Freight System, Inc., and Transamerican Freight Lines, Inc.,

Defendants.

Transamerican Freight Lines, Inc.,

Cross-Claimant-Appellant,

vs.

Brada Miller Freight System, Inc.,

Cross-Defendant-Appellee.

1973

Aug. 24 Filed original record on appeal.

1974

Apr. 25 Heard and taken under advisement—morning session.

May 6 Entered final order Affirming.

In the United States District Court
Southern District of Illinois
Southern Division

Sandra Wear,
Plaintiff,
vs.
Brada Miller Freight System, Inc., and Transamerican Freight Lines, Inc.,
Defendants.
No. 68C271(1)

AMENDED CROSSCLAIM
Of Defendant Transamerican Freight Lines, Inc., Against Defendant Brada Miller Freight System, Inc.

(Filed September 23, 1971)

Comes now defendant, Transamerican Freight Lines, Inc., and for its crossclaim against defendant, Brada Miller Freight System, Inc., states and alleges as follows:

1. That on January 19, 1968, defendant, Brada Miller Freight System, Inc. either owned, or held under a lease for more than thirty (30) days, certain motor vehicle equipment, including a 1963 International Tractor bearing Michigan License Plate No. 9929CC, and a 1965 Brown Trailer, bearing Michigan License No. 500-214.

2. That on January 19, 1968, defendant, Brada Miller Freight System, Inc. entered into a Lease Agreement, in Detroit, Michigan, whereby said defendant leased the tractor and trailer mentioned in paragraph 1 hereof to defendant, Transamerican Freight Lines, Inc., for a single trip from Detroit, Michigan to Kansas City, Missouri.

3. That such Lease Agreement, as a part thereof states:

"It is mutually understood and agreed by and between the parties hereto that First Party (Transamerican Freight Lines, Inc.) shall not be responsible to Second Party (Brada Miller Freight System, Inc.) its agents, servants and employees, for any negligence of the Second Party, its agents, servants or employees, or for any loss, damage, injury or expense arising out of the failure of Second Party to carry out the terms of this agreement. Second Party hereby agrees to indemnify and save harmless First Party from any and all claims, suits, losses, fines, or other expenses arising out of, based upon, or incurred because of injury to any person or persons, or damage to property sustained or which may be alleged to have been sustained by reason of any negligence or alleged negligence on the part of Second Party, its agents, servants, or employees, and for any loss or damage to cargo resulting from any negligence or unlawful act of Second Party, his agents, servants and employees. It is mutually understood and agreed that Second Party will defend at his own expense and cost, any and all suits that may be brought against First Party for injuries sustained, including death resulting therefrom, or damage to property caused or alleged to have been caused by the negligence of any person employed by Second Party, while engaged in the performance of any of the work required by the terms and conditions of this agreement, and for any cargo loss sustained resulting from any negligence or unlawful act on the part of Second Party, his agents, servants and employees."

4. That plaintiff in the within lawsuit claims damages from defendants and alleges that on or about the 22nd of January, 1968, U. S. Highway 40, one mile east of Smithboro, Illinois, is an open and public street and highway located in the County of Bond, State of Illinois, plaintiff was operating a motor vehicle

west on Highway 40 and that at said time and place defendant, acting by and through their agent, servant, chauffeur and employee, operated a motor vehicle west on Highway 40 and as a direct result of the joint and concurrent negligence of the defendants, acting by and through its agents, servants, chauffeur and employee, in striking and colliding with the motor vehicle being operated by plaintiff, plaintiff was caused to sustain serious and permanent injuries."

5. That the motor vehicle referred to in plaintiff's petition was the tractor and trailer which was referred to in paragraph 1 hereof, and that at the time and place alleged in plaintiff's petition, the said tractor and trailer truck was proceeding under and subject to the terms of the Lease Agreement referred to in paragraph 2 hereof, and was being driven and operated by an agent, servant and employee of defendant, Brada Miller Freight System, Inc.

6. That pursuant to the provisions of the said Lease Agreement, defendant, Transamerican Freight Lines, Inc., has made demand on defendant, Brada Miller Freight System, Inc., to take over and assume the defense of plaintiff's claim against defendant, Transamerican Freight Lines, Inc., and to hold defendant, Transamerican harmless from any judgment against it by plaintiff, and from any expenses of defending plaintiff's within action against defendant, Transamerican, all of which defendant, Brada Miller, has refused to do and still so refuses.

7. That pursuant to agreement of parties, plaintiff's cause of action against defendant, Transamerican Freight Lines, Inc., was separated from the other issues of this case for trial and as so separated proceeded to trial October 5, 1970 with the remaining separated issues of the case, including the crossclaim of Transamerican Freight Lines, Inc. against defendant, Brada Miller Freight System, Inc., passed until further order of court.

8. That during the course of the trial of plaintiff's cause of

action against defendant, Transamerican Freight Lines, Inc., negotiations for settlement of plaintiff's case advanced to a point where it was deemed prudent to reach a settlement with plaintiff in the amount of $80,000.00. At such time defendant, Transamerican Freight Lines, Inc., renewed its tender of defense to defendant, Brada Miller Freight System, Inc., and fully advised defendant, Brada Miller, whose attorney had been present in court throughout the trial, of the terms of the proposed settlement and advised defendant, Brada Miller, that if they had any objection to the proposed settlement they were again invited to take over the defense from that point, but defendant, Brada Miller, refused so to do and refused to state that they had any position or feeling that the settlement was unreasonable for any reason. Whereupon, defendant, Transamerican Freight Lines, Inc., entered into an agreement with plaintiff to settle plaintiff's case against defendant, Transamerican Freight Lines, Inc., for the sum of $80,000.00 with Transamerican Freight Lines, Inc. reserving all of its rights against defendant, Brada Miller Freight System, Inc.

9. That thereafter a dispute between plaintiff and defendant, Transamerican Freight Lines, Inc., as to certain terms of the settlement agreement delayed the completion of the settlement, but that on March 6, 1971, Transamerican Freight Lines, Inc. paid to plaintiff the sum of $80,000.00 and obtained releases and a stipulation for dismissal which has been entered by the court dismissing plaintiff's cause of action against defendant, Transamerican Freight Lines, Inc., with prejudice but again reserving all of defendant's, Transamerican Freight Lines, Inc., rights in its crossclaim against defendant, Brada Miller Freight Systems, Inc.

10. That defendant, Transamerican Freight Lines, Inc. has been damaged in the sum of $80,000.00 paid to plaintiff in settlement and in the further amount of $15,500.00 for expenses incurred in the defense of the action against it by Sandra Wear.

For all of which sums defendant, Brada Miller Freight System, Inc., is indebted to Transamerican Freight Lines, Inc. pursuant to the terms of the Lease Agreement between such defendants referred to herein.

Wherefore, cross-claimant, Transamerican Freight Lines, Inc., prays judgment against defendant, Brada Miller Freight System, Inc., for the sum of $95,500.00 with interest thereon in the amount of 6% per annum from and after March 6, 1971 and its costs herein expended.

(Certificate of Service Omitted in Printing)

In the United States District Court
Southern District of Illinois
Southern Division

(Title Omitted in Priting)

ANSWER OF DEFENDANT BRADA MILLER FREIGHT SYSTEM TO AMENDED CROSS-CLAIM OF DEFENDANT TRANSAMERICAN FREIGHT LINES

(Filed December 1, 1971)

Comes now Brada Miller Freight System, Inc. (Brada Miller) and files its answer to the amended cross-claim of defendant Transamerican Freight Lines and for said answer states:

1. For answer to Paragraph 1, defendant Brada Miller states that it held the motor vehicle equipment under Equipment Lease Agreement dated November 1, 1967.

2. Defendant Brada Miller denies the allegations of Paragraph 2.

3. Defendant Brada Miller denies that it entered into any Lease Agreement with defendant Transamerican Freight Lines and, therefore, denies the allegations of Paragraph 3.

4. For answer to Paragraph 4, defendant Brada Miller refers to the allegations of plaintiff's first amended complaint.

5. Defendant Brada Miller denies the allegations of Paragraphs 5 and 6.

6. Defendant Brada Miller admits the allegations of Paragraph 7.

7. For answer to Paragraph 8, defendant Brada Miller admits that at no time did it agree that any settlement between plaintiff and defendant Transamerica was reasonable; defendant Brada Miller denies the other allegations of Paragraph 8.

8. Defendant Brada Miller is without knowledge regarding the allegations of Paragraph 9 and, therefore, denies same.

9. Defendant Brada Miller denies the allegations of Paragraph 10.

10. Defendant Brada Miller denies each and every other allegation in defendant Transamerica's Amended Cross-claim not specifically admitted herein.

11. For further answer, defendant Brada Miller states that defendant Transamerica's Amended Cross-claim does not allege facts which constitute a cause of action against defendant Brada Miller upon which relief may be granted.

12. For further answer, defendant Brada Miller states that defendant Transamerica's Amended Cross-Claim fails to allege that any settlement it may have made with plaintiff was fair and reasonable.

13. For further answer, defendant Brada Miller states that in making any settlement with plaintiff, defendant Transamerican acted as a volunteer.

14. For further answer, defendant Brada Miller states that the purported Lease Agreement was not authorized by defendant Brada Miller; that no person had any authority, express or implied, to enter into any such agreement on behalf of Brada Miller; that at the time of the accident referred to in plaintiff's First Amended Petition, the vehicle was being operated solely on behalf of defendant Transamerican.

15. For further answer, defendant Brada Miller states that at the time of the accident referred to in plaintiff's First Amended Petition, the vehicle was reported to Brada Miller to have been "out of service"; that the owner of said vehicle illegally and fraudulently and without the knowledge and consent of Brada Miller, allowed said vehicle to be used by and on behalf of and for the purposes of defendant Transamerican.

16. That defendant Brada Miller has tendered to the Court the sum of $225.00, being the amount of purported payment

made by check from defendant Transamerican to defendant Brada Miller which check was mistakenly, accidentally, routinely and through mistake of fact negotiated by defendant Brada Miller.

17. That defendant Transamerican used and operated the vehicle in violation of the Interstate Commerce Commission's Lease and Interchange Regulations, 49 CFR 1057 et seq.

Wherefore, having fully answered, defendant Brada Miller prays to be dismissed and for costs.

(Signature omitted in printing.)

In the United States District Court
Southern District of Illinois
Southern Division

AFFIDAVIT

(Dated November 22, 1968)

State of Indiana
County of Howard } ss.

Donavon F. Rayl, being duly sworn upon his oath, deposes and states:

1. My residence address is 128 East Boulevard, Kokomo, Indiana; I am Vice President of Brada Miller Freight System, Inc., whose address is 1210 South Union Street, Kokomo, Indiana; and I am authorized to make this affidavit on behalf of Brada Miller Freight System, Inc.

2. On November 1, 1967, Brada Miller Freight System, Inc. executed an Equipment Lease Agreement with May Mawby for a vehicle described as follows: Unit No. 7290, Trac. Type 3 axle Conv., Make International, Year 1963, Serial No. FD21837G, Lic. No. & State 9929CG; and on November 16, 1967 Brada Miller Freight System, Inc. executed an Equipment Lease Agreement with May Mawby for a tractor described as follows: Unit No. 7290 ZW, S.Trlr. Type Flat, Make Brown, Year 1965, Serial No. TCD464, Lic. No. & State Mich. 502493. A copy of the said Equipment Lease Agreements are attached hereto as Exhibits 1-A and 1-B.

3. On or about January 19, 1968, Howard L. Hardrick, the driver of the said equipment, reported to the office of Brada

Miller Freight System, Inc. at Detroit, Michigan that the equipment required repairs and would be "out of service" in a repair shop for several days, and pursuant to the said report, the said Howard L. Hardrick completed a driver's daily log for the dates of January 19, 20 and 21 of 1968. A copy of the said driver's daily logs are attached hereto as Exhibits 2-A, 2-B and 2-C.

4. On January 19, 1968 the said Howard L. Hardrick, without either the knowledge or authority of Brada Miller Freight System, Inc., executed a "Lease Agreement" with Transamerican Freight Lines, Inc., a copy of which "Lease Agreement" is attached hereto as Exhibit 3.

5. Howard L. Hardrick, the driver of the tractor herein identified at paragraph 2, was not authorized to act for Brada Miller Freight System, Inc. in the execution of the said "Lease Agreement" with Transamerican Freight Lines, Inc.

6. The said "Lease Agreement", herein attached as Exhibit 3, was in violation of the provisions of Title 49, Code of Federal Regulations, Section 1057, in that the said regulation, at Section 1057.4(a)(4) and at Section 1057.4(a)(4)(i) states in part as follows:

> 1057.4 Augmenting Equipment. Other than equipment exchanged between motor common carriers in interchange service as defined in Sec. 1057.5, authorized carriers may perform authorized transportation in or with equipment which they do not own only under the following conditions:
>
> (a) Contract Requirements. The contract, lease, or other arrangement for the use of such equipment:
>
> (1) Parties. Shall be made between the authorized carrier and the owner of the equipment.

(2) Written Contract Required. Shall be in writing and signed by the parties thereto or their regular employees or agents duly authorized to act for them in the execution of contracts, leases, or other arrangements. * * *

(4) Exclusive Possession and Responsibilities. Shall provide for the exclusive possession, control, and use of the equipment, and for the complete assumption of responsibility in respect thereto, by the lessee for the duration of said contract, lease or other arrangement, except:

(i) Lessee May Be Considered as Owner. Provision may be made therein for consideration of the owner for the purpose of subleasing under these rules to other authorized carriers during such duration. * * *

7. During the period of time that the said Howard L. Hardrick reported to Brada Miller Freight System, Inc. that the said equipment was "out of service" the said Hardwick arranged with a person known as Wesley Mawby, the husband of May Mawby, to place the said equipment under the control of Transamerican Freight Lines, Inc., and thereafter, the said Transamerican Freight Lines, Inc. made arrangements for the use of the said vehicle by directing the said vehicle to pick up a load of sheet steel to haul from Ecrose, Michigan to 7500 East Twelfth Street, Kansas City, Missouri.

8. The said equipment, while it was being operated for the purposes and benefits of Transamerican Freight Lines, Inc., by the said Howard L. Hardrick, was involved in an accident on January 22, 1968 at or about 7:30 a.m. on route 40, east of Smithboro in the State of Illinois, with an automobile driven by Sandra K. Wear.

9. The said Howard L. Hardrick, the driver of the equipment at the time of the accident on January 22, 1968, reported the accident to Roy H. Christiansen, an attorney for Transamerican

Freight Lines, Inc., but did not report the accident to Brada Miller Freight System, Inc.

10. The first knowledge that Brada Miller Freight System, Inc. had of this accident was about May 6, 1968.

Further affiant sayeth not.

/s/ DONAVON F. RAYL

(Jurat omitted in printing.)

after called LESSEE, and MAY DAIRY of 17620 COLGATE
DETROIT (City) MICHIGAN (State) (Name) (Address) hereinafter called LESSOR,

WITNESSETH THAT:

WHEREAS, Lessee is engaged in the business of interstate transportation of property by motor vehicle, and Lessor is the owner of the following described vehicle or vehicles:

	Trac. Type	Make	Year	Serial No.	Lic. No. & State	PSC No.
Unit No. 7290	3 axle Conv.	International	1963	FD218370	992903	
Unit No.	S. Trlr. Type	Make	Year	Serial No.	Lic. No. & State	

NOW THEREFORE, in consideration of this lease and the agreement hereafter expressed, it is hereby agreed as follows:

1. Lessor does hereby lease to Lessee the above described equipment for use only in transporting such property as Lessee may require for a series of trips between various points and places, for the period of one year from the date hereof, which period shall continue in effect thereafter unless terminated by either party upon ten days notice in writing; provided further, that after thirty days from the date of this instrument either party may terminate this lease at any time by giving a written notice to the other party of its intention so to do at least ten days prior to the proposed date of termination.

2. Lessor warrants that said motor vehicles are in good operating condition and in all respects in compliance with the motor carrier safety regulations of the Interstate Commerce Commission, and that he will maintain the same in such condition during the entire term of this lease. In the event of the failure of Lessor to pay said operation costs or maintain or keep said vehicles and equipment in first-class operating condition, Lessee may pay the necessary operating costs and necessary costs of keeping said vehicles in first-class condition, deducting same from rentals due under this lease. Lessor shall furnish all fuels, gas, oils, lubricants, tires, parts, repairs, licenses and permits in the State of domicile, and all other materials and services, and will pay all other expenses incidental to operating the above described equipment in a safe and dependable manner. Lessor shall obtain duplicate fuel tickets in the State of Kentucky, and will provide Lessee with one copy of all such fuel tickets evidencing purchases in this State. Lessor shall in no instance incur indebtedness in the name of the Lessee without express permission in each separate instance. Lessor shall carry his own insurance for collision, upset or other damage to the equipment, and for fire, theft, etc., and will hold Lessee harmless from all liability in connection with damage to said equipment. The Lessee shall not be liable for any damage to vehicles resulting from collision that may occur between leased equipment employed by the Lessee when the insurance coverage is carried under the same policy.

3. Payment by the Lessee for the use of the Lessor's equipment shall be (33 %) of the gross revenue assigned to Brada Miller Freight System Inc., and received for the transportation of properties transported by the Lessor's equipment. The division of revenue for the transportation of said properties shall be, 33 % tractor and _____ % trailer. Lessor further agrees that all other proper charges as hereinafter set forth shall be deducted from the (33 %) gross equipment revenue and the difference paid to the Lessor as net lease equipment rental (net lease equipment rental shall be interpreted to mean the net proceeds after all proper deductions). Lessor agrees to submit all questions, with regard to the periodic settlement statements for equipment rental compensation and/or driver's wages, in writing. After thirty (30) days have elapsed without a written inquiry having been submitted by the Lessor to the Lessee, any settlement statement for equipment rental and/or driver's wages, shall be considered correct and final.

4. Before settlement for the equipment rental, all known expenses of operation, including but not limited to rate errors necessitating charge backs, cost of labor connected with the loading or unloading of the vehicle, and all expenses of a like or similar character growing out of the operation of the equipment, shall be deducted from the equipment earnings, and if any such charges are later discovered, particularly charge backs for rate errors, the same shall be deducted from subsequent settlements for equipment earnings. And to secure the payment of any such charges or amounts due the Lessee, a cash bond or reserve in the sum of ($300.00) shall be required from the Lessor which bond shall be paid by deducting from the equipment earnings the sum of $20.00 each pay period from the beginning of the lease until the amount of the bond has been deposited. This bond shall also be used to pay for any and all damages to the property of the Lessee, either owned or leased by the Lessee, other than the equipment listed in this equipment lease agreement, these damages resulting from negligence of the driver and/or owner of the equipment listed in this equipment lease agreement. This bond shall be held by the company for a minimum period of ninety (90) days after the cancellation or expiration of the lease. However, the release of the bond as herein provided shall in no way relieve the Lessor of his liability to the Lessee for any amounts which may thereafter be determined to be due to the Lessee as a result of such charge backs or other expenses.

5. The Lessor shall be held responsible for all loss, shortage or damage of cargo which is the result of the operation of the Lessor's equipment while it is in a faulty or improper condition, also any loss, shortage or damage of cargo which is the result of the driver's carelessness or negligence.

6. For the duration of this lease the equipment shall be driven by a duly and properly qualified driver. Provided further, that only a driver first approved and found duly qualified by the Lessee shall be permitted to drive the equipment at any time, and no change in drivers shall be made until approved by the Lessee.

7. Said equipment shall be and remain under the complete control of the Lessee for the duration of this lease and the driver of said equipment shall be considered the employee of the Lessee. However, the Lessor shall be solely liable and responsible for any and all judgments, fines, costs and expenses, including bail bond costs and attorneys fees, levied against either the Lessor or Lessee as a result of the violation of any criminal, traffic or weight law of any state or municipality committed by the Lessor or his drivers, and the Lessor agrees to indemnify and save the Lessee harmless against any and all such costs and expenses.

8. Lessee shall maintain Public Liability and Property Damage insurance as well as Workmen's Compensation insurance and agrees to hold Lessor harmless from any such claim while said equipment is in the actual service of the Lessee; however, Lessor shall maintain at his own expense Public Liability and Property Damage insurance and present proof of such coverage from his Insurance Carrier which shall be effective while the equipment is parked, deadheading, bobtailing or otherwise being operated in any manner other than under or pursuant to specific dispatch instructions from the Lessee; and the Lessor will save Lessee harmless from any loss, claim or liability while the equipment, or either unit thereof is so used or employed. This shall be construed to mean that the Lessee will not be responsible for Public Liability, Property Damage, Workmen's Compensation or Cargo insurance when the equipment is being used other than in connection with the transportation of freight under the authority and with the authorization of the Lessee, or when the same is being used in any manner except under and pursuant to dispatch instructions of the Lessee.

9. All Equipment Lease Agreements executed in the State of Indiana shall be conclusively presumed to be Indiana contracts, and all accidents resulting in injuries to a Lessor or his driver shall be compensable, if at all, insofar as Lessee is concerned, only under and pursuant to the terms and provisions of the Indiana Workmen's Compensation Law, irrespective of the residency or citizenship of the Lessor or driver or the place of the accident out of which the injury arises.

10. Painting and lettering of Lessor's equipment in the current design will be effected immediately after the signing of the Equipment Lease Agreement, without reservation, Lessor's expense.

11. Termination of the Lease Agreement at any time and for whatever cause will be immediately followed by the removal within twenty-four hours of the name "Brada Miller Freight System, Inc.," all permit numbers, and other signs concerning or pertaining to operations for Brada Miller Freight System, Inc., from the Unit(s) leased.

Dated at Detroit Michigan this 1st day of November, 1967

BRADA MILLER FREIGHT SYSTEM, INC.

By _____ (Lessee)

_____ (Lessor)

By _____ (Agent)

FORM 1025 REV. 7-63 SHEARER PRINTING SER.

EXHIBIT 1-A

THIS AGREEMENT made the day and year hereinafter written, between BRADA MILLER FREIGHT SYSTEM, INC., KOKOMO, IND., hereinafter called LESSEE, and MAY DAIRY of 17620 Colgate
Detroit (City) Michigan (State) (Name) (Address) hereinafter called LESSOR,

WITNESSETH THAT:

WHEREAS, Lessee is engaged in the business of interstate transportation of property by motor vehicle, and Lessor is the owner of the following described vehicle or vehicles:

	Trac. Type	Make	Year	Serial No.	Lic. No. & State	PSC No.
Unit No. 7290 Z1	Flat	Brown	1965	TCD464	Mich. 502493	
Unit No.	S. Trlr. Type	Make	Year	Serial No.	Lic. No. & State	

NOW THEREFORE, in consideration of this lease and the agreement hereafter expressed, it is hereby agreed as follows:

1. Lessor does hereby lease to Lessee the above described equipment for use only in transporting such property as Lessee may require for a series of trips between various points and places, for the period of one year from the date hereof, which period shall continue in effect thereafter unless terminated by either party upon ten days notice in writing; provided further, that after thirty days from the date of this instrument either party may terminate this lease at any time by giving a written notice to the other party of its intention so to do at least ten days prior to the proposed date of termination.

2. Lessor warrants that said motor vehicles are in good operating condition and in all respects in compliance with the motor carrier safety regulations of the Interstate Commerce Commission, and that he will maintain the same in such condition during the entire term of this lease. In the event of the failure of Lessor to pay said operation costs or maintain or keep said vehicles and equipment in first-class operating condition, Lessee may pay the necessary operating costs and necessary costs of keeping said vehicles in first-class condition, deducting same from rentals due under this lease. Lessor shall furnish all fuels, gas, oils, lubricants, tires, parts, repairs, licenses and permits in the State of domicile, and all other materials and services, and will pay all other expenses incidental to operating the above described equipment in a safe and dependable manner. Lessor shall obtain duplicate fuel tickets in the State of Kentucky, and will provide Lessee with one copy of all such fuel tickets evidencing purchases in this State. Lessor shall in no instance incur indebtedness in the name of the Lessee without express permission in each separate instance. Lessor shall carry his own insurance for collision, upset or other damage to the equipment, and for fire, theft, etc., and will hold Lessee harmless from all liability in connection with damage to said equipment. The Lessee shall not be liable for any damage to vehicles resulting from collision that may occur between leased equipment employed by the Lessee when the insurance coverage is carried under the same policy.

3. Payment by the Lessee for the use of the Lessor's equipment shall be (13 %) of the gross revenue assigned to Brada Miller Freight System Inc., and received for the transportation of properties transported by the Lessor's equipment. The division of revenue for the transportation of said properties shall be, _____ % tractor and 13 % trailer. Lessor further agrees that all other proper charges as hereinafter set forth shall be deducted from the (13 %) gross equipment revenue and the difference paid to the Lessor as net lease equipment rental (net lease equipment rental shall be interpreted to mean the net proceeds after all proper deductions). Lessor agrees to submit all questions, with regard to the periodic settlement statements for equipment rental compensation and/or driver's wages, in writing. After thirty (30) days have elapsed without a written inquiry having been submitted by the Lessor to the Lessee, any settlement statement for equipment rental and/or driver's wages, shall be considered correct and final.

4. Before settlement for the equipment rental, all known expenses of operation, including but not limited to rate errors necessitating charge backs, cost of labor connected with the loading or unloading of the vehicle, and all expenses of a like or similar character growing out of the operation of the equipment, shall be deducted from the equipment earnings, and if any such charges are later discovered, particularly charge backs for rate errors, the same shall be deducted from subsequent settlements for equipment earnings. And to secure the payment of any such charges or amounts due the Lessee, a cash bond or reserve in the sum of ($300.00) shall be required from the Lessor which bond shall be paid by deducting from the equipment earnings the sum of $20.00 each pay period from the beginning of the lease until the amount of the bond has been deposited. This bond shall also be used to pay for any and all damages to the property of the Lessee, either owned or leased by the Lessee, other than the equipment listed in this equipment lease agreement, these damages resulting from negligence of the driver and/or owner of the equipment listed in this equipment lease agreement. This bond shall be held by the company for a minimum period of ninety (90) days after the cancellation or expiration of the lease. However, the release of the bond as herein provided shall in no way relieve the Lessor of his liability to the Lessee for any amounts which may thereafter be determined to be due to the Lessee as a result of such charge backs or other expenses.

5. The Lessor shall be held responsible for all loss, shortage or damage of cargo which is the result of the operation of the Lessor's equipment while it is in a faulty or improper condition, also any loss, shortage or damage of cargo which is the result of the driver's carelessness or negligence.

6. For the duration of this lease the equipment shall be driven by a duly and properly qualified driver. Provided further, that only a driver first approved and found duly qualified by the Lessee shall be permitted to drive the equipment at any time, and no change in drivers shall be made until approved by the Lessee.

7. Said equipment shall be and remain under the complete control of the Lessee for the duration of this lease and the driver of said equipment shall be considered the employee of the Lessee. However, the Lessor shall be solely liable and responsible for any and all judgments, fines, costs and expenses, including bail bond costs and attorneys fees, levied against either the Lessor or Lessee as a result of the violation of any criminal, traffic or weight law of any state or municipality committed by the Lessor or his drivers, and the Lessor agrees to indemnify and save the Lessee harmless against any and all such costs and expenses.

8. Lessee shall maintain Public Liability and Property Damage insurance as well as Workmen's Compensation insurance and agrees to hold Lessor harmless from any such claim while said equipment is in the actual service of the Lessee; however, Lessor shall maintain at his own expense Public Liability and Property Damage insurance and present proof of such coverage from his Insurance Carrier which shall be effective while the equipment is parked, deadheading, bobtailing or otherwise being operated in any manner other than under or pursuant to specific dispatch instructions from the Lessee; and the Lessor will save Lessee harmless from any loss, claim or liability while the equipment, or either unit thereof is so used or employed. This shall be construed to mean that the Lessee will not be responsible for Public Liability, Property Damage, Workmen's Compensation or Cargo insurance when the equipment is being used other than in connection with the transportation of freight under the authority and with the authorization of the Lessee, or when the same is being used in any manner except under and pursuant to dispatch instructions of the Lessee.

9. All Equipment Lease Agreements executed in the State of Indiana shall be conclusively presumed to be Indiana contracts, and all accidents resulting in injuries to a Lessor or his driver shall be compensable, if at all, insofar as Lessee is concerned, only under and pursuant to the terms and provisions of the Indiana Workmen's Compensation Law, irrespective of the residency or citizenship of the Lessor or driver or the place of the accident out of which the injury arises.

10. Painting and lettering of Lessor's equipment in the current design will be effected immediately after the signing of the Equipment Lease Agreement, without reservation, at Lessor's expense.

11. Termination of the Lease Agreement at any time and for whatever cause will be immediately followed by the removal within twenty-four hours of the name "Brada Miller Freight System, Inc.," all permit numbers, and other signs concerning or pertaining to operations for Brada Miller Freight System, Inc., from the Unit(s) leased.

Dated at Detroit Michigan this 16th day of November, 1967

BRADA MILLER FREIGHT SYSTEM, INC.

By _____ (Lessee)

_____ (Lessor)

By _____ (Agent)

FORM 1025 REV. 7-63 SHEARER PRINTING SER.

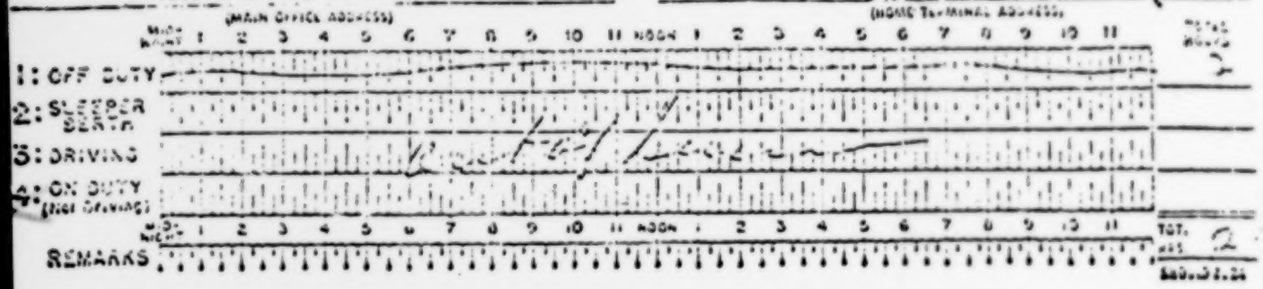
EXHIBIT 1-B

BEST COPY AVAILABLE

0 (TOTAL MILES DRIVING TODAY) Howard W. Hardt (DRIVER'S SIGNATURE IN FULL)

BRADA MILLER FREIGHT SYSTEM, INC. (NAME OF CARRIER) (NAME OF CO-DRIVER)

1210 S. UNION, KOKOMO, IND. (MAIN OFFICE ADDRESS) (HOME TERMINAL ADDRESS)


MIDNIGHT 1 2 3 4 5 6 7 8 9 10 11 NOON 1 2 3 4 5 6 7 8 9 10 11
TOTAL HOURS
1: OFF DUTY
2: SLEEPER BERTH
3: DRIVING
4: ON DUTY (Not Driving)
MIDNIGHT 1 2 3 4 5 6 7 8 9 10 11 NOON 1 2 3 4 5 6 7 8 9 10 11
TOT. HRS. 2
REMARKS

NO DOCUMENT

Shipping document number, or name of shipper & commodity information required by Section 395.8 (b) — Check the time & enter the name of place where you reported & were relieved from work & when & where each change of duty occurred. Explain entries made pursuant to Section 395.8 (d).

IMPORTANT — Falsification of any of failure to make all entries full and true, can subject you to prosecution by the Federal Government under the Interstate Commerce Act & Motor Carrier Safety Regulations. Explain emergency deviation for any excess driving of weekly time on reverse side of log . . . See items of instruction on outside back cover of this log.

TO:

(STARTING POINT OR PLACE) USE TIME STANDARD OF HOME TERMINAL (DESTINATION OR TURN AROUND POINT OR PLACE)

PREVIOUS LOGS MUST BE TURNED IN TO MIDNIGHT OF PRECEDING DAY BEFORE DEPARTURE FROM ANY TERMINAL

NOTE: IF LEASED OR INTERCHANGED TO OTHER MOTOR CARRIERS — WRITE NAME OF EACH CARRIER AT TIME MARKERS UNDER "REMARKS" TO SHOW TIME SPENT IN THEIR SER...

EXHIBIT 2-A

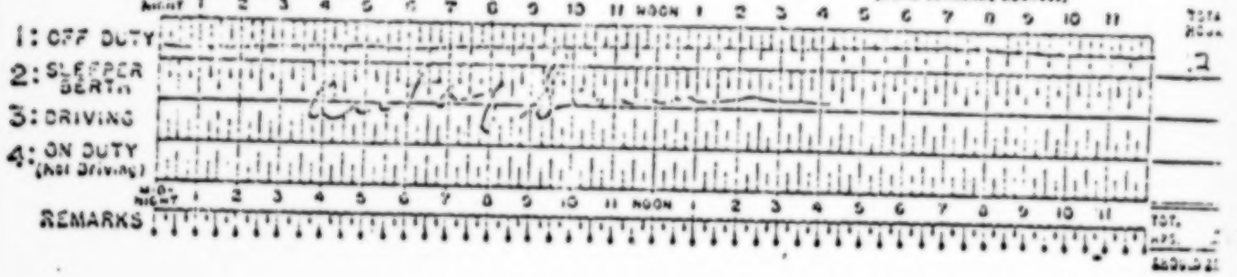
10986-20 DRIVER'S DAILY LOG (One calendar day - 24 hours)

(MONTH) (DAY) (YEAR) (TOTAL MILEAGE TODAY) I CERTIFY THESE ENTRIES ARE TRUE AND CORRECT: (DRIVER'S SIGNATURE IN FULL) Vehicle Numbers (Show all)

(TOTAL MILES DRIVING TODAY)

BRADA MILLER FREIGHT SYSTEM, INC. (NAME OF CARRIER) (NAME OF CO-DRIVER)

1210 S. UNION, KOKOMO, IND. (MAIN OFFICE ADDRESS) (HOME TERMINAL ADDRESS)


MIDNIGHT 1 2 3 4 5 6 7 8 9 10 11 NOON 1 2 3 4 5 6 7 8 9 10 11
TOTAL HOURS
1: OFF DUTY
2: SLEEPER BERTH
3: DRIVING
4: ON DUTY (Not Driving)
MIDNIGHT 1 2 3 4 5 6 7 8 9 10 11 NOON 1 2 3 4 5 6 7 8 9 10 11
TOT. HRS. 2
REMARKS

SHIPPING DOCUMENT

NO.:

Shipping document number, or name of shipper & commodity information required by Section 395.8 (b) — Check the time & enter the name of place where you reported & were relieved from work & when & where each change of duty occurred. Explain entries made pursuant to Section 395.8 (d).

IMPORTANT — Falsification of any of failure to make all entries full and true, can subject you to prosecution by the Federal Government under the Interstate Commerce Act & Motor Carrier Safety Regulations. Explain emergency deviation for any excess driving of weekly time on reverse side of log . . . See items of instruction on outside back cover of this log.

FROM: TO:

(STARTING POINT OR PLACE) USE TIME STANDARD OF HOME TERMINAL (DESTINATION OR TURN AROUND POINT OR PLACE)

PREVIOUS LOGS MUST BE TURNED IN TO MIDNIGHT OF PRECEDING DAY BEFORE DEPARTURE FROM ANY TERMINAL

NOTE: IF LEASED OR INTERCHANGED TO OTHER MOTOR CARRIERS — WRITE NAME OF EACH CARRIER AT TIME MARKERS UNDER "REMARKS" TO SHOW TIME SPENT IN THEIR

EXHIBIT 2-B

(Vehicle) (Date) (Terminal) (Home Terminal Official Time)

(Total Miles Driving Today)

(Driver's Signature in Full)

ERADA MILLER FREIGHT SYSTEM, INC.

(Name of Carrier)

(Name of Co-Driver)

1210 S. UNION, KOKOMO, IND.

(Main Office Address)

(Home Terminal Address)

	Mid-Night 1	2	3	4	5	6	7	8	9	10	11	Noon 1	2	3	4	5	6	7	8	9	10	11	Total Hours
1: Off Duty																							2
2: Sleeper Berth																							
3: Driving																							
4: On Duty (Not Driving)																							
	Mid-Night 1	2	3	4	5	6	7	8	9	10	11	Noon 1	2	3	4	5	6	7	8	9	10	11	Total Hours
Remarks																							2

Shipping Document

No.:

Show all intermediate points, or name of shipper & commodity information required by Section 195.8 (b) — Check the time & enter the name of place where you reported & were relieved from work & where each change of duty occurred. Explain engine hours — Section 195.8 (d).

IMPORTANT — Falsification of log or failure to make all entries full and true, can subject you to prosecution by the Federal Government under the Interstate Commerce Act . . . Any current to last step . . . Explain emergency omission for any unless driving or weekly time on reverse side of log . . . See items of instruction on outside back cover of log.

FROM: — TO:

(Starting Point or Place) Use Time Standard of Home Terminal (Destination or Turn Around Point or Place)

Deviation from Duty May Be Needed in Addition to Midnight or Beginning Day Records Required from Any Terminal

EXHIBIT 2-C

Transamerican Freight Li[illegible], Inc., Detroit, Michigan

LEASE AGREEMENT WITH AUTHORIZED CARRIERS

No. 2—Transfer and Bill of Sale to be sent to Dept. — Attach to Pay Copy of Sched.

THIS AGREEMENT, made and entered into this 19 th. day of January A.D. 19 68 by and between Transamerican Freight Lines, Inc., Detroit, Michigan, a corporation, hereinafter referred to as the First Party, and Erada Miller Freight System, Inc., 1210 South Union Ave. of the City of Kokomo, State of Indiana hereinafter referred to as the Second Party.

WITNESSETH: Whereas, First and Second Parties are authorized carriers as that term is defined in the Rules and Regulations of the Interstate Commerce Commission pertaining to the leasing and interchange of vehicles by motor carriers, and

WHEREAS, the Second Party is the owner of motor vehicle equipment regularly used by it which it desires to lease to the First Party, or the use of which is otherwise required,

NOW, THEREFORE, in consideration of the compensation to be paid by First Party to Second Party and the mutual promises, agreements and conditions herein contained, it is hereby agreed as follows:

1. The Second Party hereby leases to the First Party the following motor vehicle equipment to be operated by Walt Hendricks, owner & driver, Inc. (Name of Driver) a driver who is employed by the Second Party to operate said equipment on the public highways of the United States, for the purpose of transporting property in interstate commerce for the duration of one (1) single trip beginning at [illegible] A.M. to 1:00 P.M. on Jan. 19, 1968, at which time title to said equipment shall revert to Second Party or its agent unless First Party elects to lease such equipment for another trip. First Party may transport the same in its name from the place or places Second Party may designate in the City of Detroit, State of Michigan to Kansas City, Kan. and State of Kansas or Missouri or both, or any other point to which it is authorized to operate.

DESCRIPTION OF VEHICLES

Type of Equipment	No. of Axles	Make	Year	Engine No.	Serial No.	Weight	License Plates: State	License Plates: Number
tractor	3	Intl	1963	FD 218328		14220	Mich.	9329 CC
trailer	2	Brown	1965	TCD 663		11790	Mich.	900-214

First Party agrees to pay Second Party and Second Party agrees to accept therefor the following compensation:

BASIS OF PAY FOR TRIP REPORT NUMBER 201 - 4716½

RENTAL:

_____ MILES AT _____ PER MILE
_____ POUNDS AT _____ PER TON
73 % OF $ Gross REVENUE } $ _____
OTHER _____ $ _____
TOTAL $ _____

LESSOR'S I.C.C. DOCKET NO.
MC29079

TRANSAMERICAN PLACARD SERIAL NUMBER 9329 HAS BEEN AFFIXED TO SAID VEHICLE

2. Second Party further agrees that it will bear the entire cost of operating said motor vehicle equipment, and that it and all times said motor vehicle equipment or good maintenance, upkeep and repair, and will employ said motor vehicle equipment to be operated only by a competent employee of the Second Party, or which event said employee of the Second Party shall be the employee of the Second Party in the pursuance of his duties and not the employee or agent of the First Party. It is hereby expressly understood and agreed that nothing herein is to be construed as constituting Second Party, its agents, servants or employees, as the servant, employee or representative of the First Party.

3. It is mutually understood and agreed, that the First Party during the term of this lease shall have the control and responsibility for the operations of said equipment in respect to the public and the Interstate Commerce Commission for such period that said equipment is to be used under the terms of this lease as provided in Paragraph 1 hereof.

4. Second Party further agrees that in the operation of said motor vehicle equipment it will comply with all the rules and regulations of the Bureau of Motor Carriers of the Interstate Commerce Commission, and the applicable local and highway laws, public utility commissions and of any other duly constituted state authority that it will maintain all pertinent rules and regulations governing the hours of service of drivers and helpers, and all of said rules, laws and regulations of any governmental authority relating to the operation upon the public highways of said motor vehicle equipment that it will comply with the Social Security laws, unemployment insurance, old age insurance, or other social security payments that may become due by reason of the payment of wages to drivers or helpers, and all laws or regulations now or hereafter enacted or promulgated by legally constituted authorities in respect thereto.

5. It is mutually agreed that responsibility of First Party resulting from control and use of said equipment pursuant to Paragraph 4 shall in no way abrogate the rights of the First Party to use said equipment and indemnity from the Second Party as set out in Paragraph 9 hereof.

6. It is further agreed that Second Party represents that its employee, agent or servant executing this agreement has full authority to act on the behalf and represents that said person is competent and qualified to perform the vehicle inspections required by the Interstate Commerce Commission regulations.

7. Second Party further agrees to procure and maintain at its own expense adequate fire, theft, comprehensive collision insurance with respect to the aforesaid motor vehicle equipment, and to additional and First Party harmless from any and all loss, damage or expense arising out of fire, theft, casualties, accident or other casualty of every kind whatsoever to the units the Second Party shall operate designated by Second Party while operating said motor vehicle equipment and during the operation thereof while in pursuit of property belonging to or owned by the First Party, and also insure damaged or lost because of the fault or negligence of the Second Party or the other designated or said motor Party. In which Party agrees to pay First Party for loss of damage as set. The Second Party further agrees to indemnify and to hold the First Party harmless from all loss and costs to property belonging to or owned by the First Party and from all losses and claims for damage that shall be occasioned or caused by the negligence or fault of the Second Party or the driver or operator of said equipment used by the Second Party.

8. It is mutually understood and agreed by and between the parties hereto that First Party shall not be responsible to Second Party, its agents, servants and employees, nor any negligence of the Second Party, its agents, servants or employees, or for any loss, damage, injury or expense arising out of the use of or operation of said equipment by Second Party in carrying out the terms of this Agreement. Second Party hereby indemnifies and save harmless First Party from any and all claims, suits, losses, liens or other expenses arising out of, in connection with or growing out of injuries because of injury to any person or persons (including the property statement of which may at any time be brought against First Party for injuries sustained, including death resulting therefrom, or damage to property caused or alleged to have been caused, by any and all acts but only to property belonging to First Party, its agents, servants or employees, and for damage to cargo resulting from any reason use or unlawful use of Second Party, its agents, servants or employees. It is mutually understood and agreed that Second Party will insure, at its own cost and expense, by and all acts but only to property belonging to First Party for injuries sustained, including death resulting therefrom, or damage to property caused or alleged to have been caused, by any person employed by Second Party, while engaged in the performance of any of the terms and conditions of this Agreement, and for any notice loss arising from any negligence or misconduct on the part of Second Party, its agents, servants and employees. Nothing in this Paragraph 8 contained shall be construed to be inconsistent with the meaning of the First Part to the public in connection with the use of said equipment under this Agreement.

9. It is mutually understood and agreed that upon the termination of this Agreement, the Second Party will forthwith remove from said motor vehicle equipment all power, rights or other property belonging to First Party, and deliver the same to said First Party, together with any other property of First Party that may be then in the possession of Second Party's collections and C.O.D. charges.

First Party has caused an inspection to be made of the aforesaid motor vehicle equipment, the results of which have been satisfactory upon the report attached to a copy of this lease, which that the same is equipped with all parts and accessories necessary for the safe operation in accordance with the safety Regulations of the Interstate Commerce Commission.

The First Party, by signing this Agreement acknowledges receipt of the motor vehicle equipment hereinbefore described in Paragraph 1 above on the date and at the time thereon set forth.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed in quadruplicate on the date set forth below.

Jan. 19, 1968

AMERICAN FREIGHT LINES, INC.
17515 Dix Road - Melvindale, Michigan
(Detroit, Michigan area)

By E. Emery
(First Party)

Erada Miller Freight System, Inc.
(Name of Motor Vehicle Co. Owner)

By Harold D. Hendricks
(Authorized Agent) (Second Party)

Rev. 11-61

EXHIBIT 3 -41-

EXHIBIT 3

In the United States District Court
Southern District of Illinois
Southern Division

(Title omitted in printing)

Deposition of Donovan F. Rayl taken July 2, 1969

[2] **DONOVAN F. RAYL,**

a witness named in the agreement, being of lawful age, and being first duly sworn in the above cause, testified on his oath as follows:

Direct Examination

By Mr. Voorhees

Q. What is your name?

A. Donovan F. Rayl.

Q. Where do you live Mr. Rayl?

A. 120 East Boulevard; Kokomo, Indiana.

Q. By whom are you employed?

A. Brada Miller Freight System, Inc.

Q. What is your job with Brada Miller?

A. Vice-president.

Q. What do your duties consist of in a broad sense?

A. Mainly accidents and insurance.

Q. How long have you been with Brada Miller?

A. Seventeen years.

Q. How long have you been vice-president?

A. Ten years.

Q. Have your duties since you have been with them more or less encompassed the same areas or the same scope?

A. I have held different capacities with the company: operations department, personnel department, safety and then into the insurance and accidents.

[3] Q. Prior to going with Brada Miller, were you employed by any other freight lines?

A. No.

Q. What were you before your going with Brada Miller?

A. I was with Standard Oil of Indiana.

Q. Since you have been with Brada Miller, have you been in Kokomo the entire time?

A. Yes, sir.

Q. Have your duties ever taken you out of Kokomo for any extended period? I don't mean just a two or three day trip or something.

A. No, no.

Q. In your company, are records kept of trips which are made by your equipment, either owned or leased equipment?

A. Yes.

Q. Can you tell me what kind of records these are.

A. Well, we are required, of course, to keep the driver's logs for one year, which reflects the trips he made; and we have our own company documents, manifests covering the driver's trip; and of course we have our rolls, our revenue rolls, which covers shipments and charges.

Q. Can you tell me who would be in charge of these different records.

A. Your different departments would have the records.

Q. Can you go through that and tell me who would have **[4]** the records.

A. The paymaster would have the pay records; that is presently Charles Burnett.

Q. Is he in Kokomo?

A. Yes.

Q. Do you know his address?

A. I do know. It is the Frontenelle Apartments. The logs are under Mr. Freddie Barnes, who is the safety director. He also lives at the Frontenelle Apartments. Those two people would control those documents.

Q. Who would be in charge of the financial records regarding the payment to the company for various trips and shipments?

A. That would be our vice-president for finance, Mr. William Jones.

Q. Do you have any idea what his address is?

A. It is Rural Route, Russiaville, Indiana.

Q. Is that a suburb of Kokomo?

A. Yes, it is about five miles—ten miles.

Q. Who would be in charge of the filing and handling of any tax forms and reports?

A. Mr. Jones, also, would have those, our vice-president for finance.

Q. By the way, did you bring any records with you that **[5]** would pertain to any of the relations between Brada Miller and the Mawbys and Mr. Hardwick.

A. Our attorney has copies of our records; they have been furnished to him.

Q. Other than those, you didn't bring any along with you?

A. No.

Q. In the business of operating the Brada Miller Company—by the way, would you describe their business very briefly.

A. Our company is classified as an irregular route common carrier, which is granted under the authority of Interstate Commerce Commission Motor Carrier No. 29079. "Irregular route" means you can go anyplace; "Common Carrier" means you can carry any product within our four-state area.

Q. What states do those include?

A. Indiana, Ohio, Illinois and Michigan.

Q. Do you include Missouri?

A. St. Louis is within our authority, and we have some other side authority like Fulton, Missouri.

Q. Did you ever carry freight outside of this area or bring it back to places outside of this area?

A. No, we stay within our scope. If it would be a case of going outside, it would be the exception.

[6] Q. Of the equipment you use, could you tell me; do you own any of it yourselves?

A. We own some of the trailers; none of the power units.

Q. Who are the power units owned by?

A. The power units are owned by parties other than the company, classified as brokers. You have fleet brokers and individual brokers.

Q. Could you tell me what those brokers would be.

A. An individual broker would be a driver-owner; a fleet broker would have one or more units not driven by himself.

Q. You say all of your power units are in this class?

A. Yes. We have some under lease at a given time.

Q. On the average, how many power units would you have under lease at a given time?

A. Seven hundred.

Q. Seventy?

A. Seven hundred.

Q. Do you have under lease certain of the trailers also?

A. Yes, we do.

Q. But you mentioned you did own some of your own?

A. Yes, we do, and we rent some.

Q. Do you—when you're talking about renting these power units or leasing them, are you talking in the broad **[7]** sense on what is considered the permanent lease for a year or more?

A. Yes, sir.

Q. Do you, in obtaining equipment to carry your loads ever trip-lease equipment that belonged to either other companies or individuals, on single trips?

A. We have on occasion augmented our equipment by trip-leasing.

Q. On the other hand, did you ever, with your equipment, trip-lease it to another company?

A. On occasion. It happens on approval of the company. Basically, we have enough business to keep our men busy.

Q. Do you know whether or not, let's say over the last three or four years, you have trip-leased any equipment to Transamerican Freight Lines?

A. I do not know.

Q. You are familiar with Transamerican.

A. I know them, yes.

Q. Who would know whether you had made any trip-leases to Transamerican?

A. I'd say the paymaster would know, Mr. Burnett.

Q. Would it be your practice to keep any records of the trip-leases, other than the payments that you receive?

A. If one of our men would trip-lease to another company, he would be paid through our payroll department, so there would **[8]** have to be records.

Q. Now, when you say, "if a man," you're talking about a lessor?

A. The equipment; the driver and equipment.

Q. When you're talking about paying the driver of the equipment of yours, how would this work? How do you handle this when the driver is driving for—I think you called it a fleet lessor.

A. Well, there is a union contract agreement that spells out how you pay your men in accordance with the Teamsters Union contract.

Q. When a fleet lessor is leasing equipment to you that he owns but doesn't drive himself, does he usually find the driver to drive the equipment?

A. Yes, the normal practice is: he submits the driver for approval.

Q. That was the next question I was going to ask you, so that the fleet lessor will find the driver to drive the equipment and submit the driver to you for your approval?

A. Yes.

Q. As a normal practice, who pays that driver?

A. He is an employee of the lessee of the equipment then.

Q. You would be the lessee?

[9] A. Yes.

Q. Is he paid a salary by Brada Miller?

A. He is paid in conformance with the Teamsters contract, which is a percentage of the contract.

Q. A percentage of the freight from the trip?

A. The revenue haul.

Q. Does the situation ever exist where he is paid by the lessor?

A. Not to my knowledge; he is not an employee of his.

Q. So your agreement with the lessor provides usually for payment of a certain percentage to the lessor to cover the leasing of the equipment.

A. Yes.

Q. And then another percentage to the driver to cover the driver's pay under the union contract.

A. That is not part of the agreement with the lessor.

Q. I beg your pardon, but that's the way the situation is normally handled?

A. Yes.

Q. Are you familiar with the lease of equipment that your company entered into with the—I think the name was May Mawby from Detroit?

A. Yes, sir.

Q. And are you familiar with—I think you attached a **[10]** copy of the leases to May Mawby to the affidavit which has been filed in court, the affidavit which you signed and swore to.

A. Yes, we did.

Q. Although the lease will speak for itself, this was what is known in the business as a permanent lease?

A. More than 30 days or a permanent lease.

Q. The lease in fact was for a year?

A. That's correct.

Q. From sometime in November 1967 up until November 1968?

A. Yes.

Q. Can you tell me who signed that lease on behalf of Brada Miller?

A. The signature appears to be——

Mr. Reinert: Let the record show my objection. Of course, we don't concede it is signed on behalf of Brada Miller properly. You may answer, if you can find it. Which lease are you talking about, by way of which exhibit?

Mr. Voorhees: Actually, I handed him your motion for a summary judgment; it was open to Exhibit 1-A. I believe there are two of them in there, both of which appear to have the same signature.

Mr. Reinert: Let the record show my objection is **[11]** withdrawn.

A. The signature appears to be that of Mr. Tobias.

Q. Who is he?

A. Our terminal manager at Detroit, Michigan.

Q. Do you recall or have any knowledge of who it was that was the driver of this equipment which was leased by Brada

Miller from the Mawbys? Do you know whether or not it was Howard Hardwick?

A. It was Howard Hardwick.

Q. Are you familiar with Howard Hardwick at all?

A. Not in person. I don't think I have ever met him.

Q. Do you know whether or not these leases of this equipment from May Mawby have ever been terminated?

A. Yes, I am sure they have. I don't know the date, but I am sure they have been terminated.

Q. Do you have any approximation of the date?

A. I will say as an approximation, I think it was January 30th or somewhere in that area, of 1968.

Q. Who would have the records that would reflect that? A. That would be in our permit section in Kokomo, which is under the direction of Mr. Ken Harp, H-a-r-p.

Q. What is his title?

A. His title is industrial relations director.

Q. Do you know his address?

A. The Frontenelle Apartments.

[12] Mr. Voorhees: Off the record.

(Discussion off the record.)

Q. Do you know how or in what manner the lease was terminated, or the leases, since there appear to be two of them, one for the power unit and one for the trailer.

A. I think it was on the basis of unavailability.

Q. Do you know if Brada Miller took any action to permanently terminate the lease?

A. Yes, I am sure there was written notice given sometime to effect the termination. I'd say this is our normal method of handling a notice to the lessor that the lease has been terminated.

Q. This would be handled by Mr. Harp?

A. Yes, H-a-r-p, Harp.

Q. You didn't personally do this yourself?

A. No, sir.

Q. Other than the fact that it is your normal method, you don't have any specific knowledge that it was done in this case?

A. I don't have the date, no.

Q. Did you see such a notice sent?

A. No.

Q. What would be the normal practice, the details of cancelling or terminating such a lease with the Mawbys?

A. It could be a verbal agreement between the lessor and the lessee; it could be on written ten-day notice; it **[13]** could be a lack of activity, which you would, in cleaning your files out, you would send a termination notice. As you know, in this business equipment is sometimes unavailable over a period of time. You know it is still unavailable; therefore, you cancel it out, because you know you are not going to use it for your services.

Q. Do you have any knowledge of when the last trip was that this equipment made for Brada Miller?

A. I think it made a trip on January 25th, perhaps from St. Louis to Detroit.

Q. Can you tell me how you were made aware of this.

A. By the driver's log sheets, showing his trip.

Q. You don't have any from St. Louis to Detroit?

A. I said Detroit; I don't know whether—the Michigan area.

Q. By the way, where is Brada Miller's home office?

A. Kokomo, Indiana.

Q. Is their principal place of business there?
A. Yes, sir.

Q. When equipment that is leased to Brada Miller is on a trip, can you tell us who it is that pays for the gas and oil and repairs?

A. The lessor is responsible to maintain the equipment and pay for the operating costs.

Q. So that the lessor, in this instance, would be May Mawby?
[14] A. Yes.

Q. Mr. Rayl, have you a copy of your affidavit by any chance?

A. I do not, no.

Q. All right. I wanted to ask you a few questions about some of the things you say in here. Off the record.

(Discussion off the record.)

Q. You have before you now a copy of the affidavit which you have signed and sworn to. I think it is dated November 22, 1968; is that right?

A. Yes, sir.

Q. In there, of course, you refer to these leases which we have just been discussing and about which I have been asking you questions, the lease agreements with May Mawby; and you identified those. That is the equipment that they cover in Paragraph 2 of your affidavit. Now, refer to Paragraph 3 for a moment, and there you see that Howard Hardwick, the driver of the equipment, reported to the office of Brada Miller at Detroit, Michigan, certain things. Can you tell me how this information got to you?

A. Mr. Tobias, who is our Detroit terminal manager, advised me that Mr. Hardwick reported that this equipment was out of service.

Q. Do any records reflect this?

A. Not to my knowledge—well, the log, the driver's **[15]** daily log sheet reflects out of service.

Q. Does the log reflect anything about a repair shop having it for several days?

A. No.

Q. Do you have any personal knowledge about the information there, other than what Mr. Tobias told you?

A. Not regarding the repair shop. I do work on the out of service or the log, which in turn reflects it was out of service or something was wrong with the equipment.

Q. The logs that you mentioned came to you from Mr. Tobias?

A. They came to our central office log department in the normal manner. The drivers are instructed to turn them in daily. They could have been turned in at Detroit or any location; I don't know how they came to Kokomo.

Q. You have already mentioned the person in charge of these logs.

A. Mr. Barnes.

Q. As far as the equipment requiring repairs and being in the repair shop, you don't have any knowledge yourself of this.

A. I do not.

Q. And as far as the fact that Mr. Hardwick may have told somebody that the equipment would be out of service several days, you don't have any personal knowledge of what he may have told somebody.

A. He did not tell me personally.

[16] Q. Now, refer over to the next page of that affidavit, Mr. Rayl, or have you already turned the page?

A. Yes, I have.

Q. You are ahead of me. In the fourth paragraph, when you say that Mr. Hardwick did certain things without the knowledge of or authority of Brada Miller, you don't have personal knowledge yourself of what he may have told someone else or of what someone else may have told him; isn't this correct?

Mr. Reinert: Would you explain to the witness what you mean by "personal knowledge."

Q. When I talk about "personal knowledge," I'm talking about what you, yourself, know to be a fact and not what you have learned by hearsay. Do you know what hearsay is?

A. Yes, sir. My answer would have to be no, because I did not talk to Mr. Hardwick personally.

Q. Referring down to the seventh paragraph of your affidavit, which starts on the bottom of the second page and then carries on over to the top of the third page, you mentioned in there that Mr. Hardwick arranged—whatever that means—with a person known as Wesley Mawby to do certain things. What I am after is as to your knowledge of what Mr. Hardwick did, and I am wondering how you learned of this. Is this again hearsay as far as you are concerned?

[17] A. Yes, sir.

Q. So you don't have yourself personal knowledge of any arrangement between Mr. Hardwick and Wesley Mawby?

A. That's correct.

Q. Nor of any arrangements regarding the equipment and Transamerican?

A. Other than hearsay from Roy Christensen and house counsel.

Q. When drivers of equipment for Brada Miller are authorized to make trip-leases with another company—as you said just a few moments ago, sometimes they were authorized?

A. I said it would be on a rare occasion.

Q. Do you know what kind of authorization it is customary for the company to give?

A. Their instructions are that there has to be written authorization.

Q. Do you instruct all of your drivers about this?

A. We instruct all of our personnel.

Q. Would your personnel include your drivers?

A. Yes. In their hiring process, they are instructed that they are employed by Brada Miller.

Q. Do you have any type of written form that you extend to them on occasion, authorizing trip-leases?

A. No.

[18] Q. In what manner do you give written authorization?

A. It would be from the individual carrier, the person in charge of the terminal or the terminal manager would have to give authorization to the other carrier that they can utilize this equipment.

Q. Are you familiar with any notifications sent by Brada Miller to Transamerican since this accident regarding trip-leasing?

A. Yes, sir.

Q. Could you tell us what that is.

A. I did not put this bulletin out myself, but I can say that I know that Transamerican received notice that they were not to trip-lease from any of our drivers without written approval. That is the contract, as I understand it; I do not have it in front of me.

Q. Who would have it?

A. Mr. Barnes.

Q. Do you know approximately when this notice was sent?

A. I don't.

Q. Do you recall that it has been since the instigation of this lawsuit?

A. I can't answer that; I don't know the date.

Q. Do you know whose licenses were on the equipment that **[19]** you leased from the Mawbys during the term of the lease?

A. It is my understanding that it was in the name of May Mawby.

Q. This would be the license plate that we are familiar with that would be on the back?

A. Yes, the license plate.

Q. That would be on both the trailer and the tractor?

A. And the tractor.

Q. Do you know—did Brada Miller furnish its name plates and decals for the equipment?

A. Yes, sir.

Q. Do you know if this was placed on the equipment?

A. I'm sure it was, in the normal manner.

Q. (By Mr. Koester) Was it on at the time of the accident on January 22nd?

Mr. Voorhees: You can ask him that.

Q. (By Mr. Voorhees) Do you know, were Brada Miller's permit and permit numbers affixed to the equipment?

A. The identification included the operating authority numbers of the company, yes.

Mr. Voorhees: I think that's all.

[20] **Cross-Examination**

By Mr. Koester

Q. Were the—you said this lease agreement was between November 1967 and November 1968 that you folks had with May Mawby.

A. The effective date was November 1st on the tractor; I think it was November 16th on the trailer.

Q. Then was that equipment still under lease with Brada Miller and the Mawbys on January 22, 1968? Was there a new lease, or did that lease run out then?

A. There was no new lease.

Q. Was there any kind of a lease between Brada Miller and the Mawbys on January 22, 1968?

A. Yes.

Q. What was it?

A. The one attached to the affidavit.

Q. You said it was originally taken out November 2nd or November 1st, approximately.

A. It was a one-year lease. A lease of 30 days or more has an expiration date of one year, but it can be cancelled on 30-days notice.

Q. Did this 30 days expire?

A. No.

Q. So that the lease with Brada Miller and the Mawbys was in effect on January 22, 1968.

A. With the exception that they had violated it, which **[21]** would have cancelled it.

Q. If there were a violation, it wouldn't have been in effect?

A. No, sir.

Mr. Voorhees: I will object to the answer as stating Mr. Rayl's personal opinion as to the effect of a legal violation of the lease, and I move the answer be stricken from the record.

Q. Assuming for the purpose of this question that there were no violations of the lease, as you have alleged there was, without admitting that there was or wasn't for the purpose of this question and assuming that there was no violation, at the time of this accident was Hardwick an employee of Brada Miller at

that time? That is January 22, 1968, assuming there was no violation.

Mr. Reinert: Let the record show our objections to questions of this nature. I think all objections are preserved.

A. I'd say the man was not our employee, because he had already violated the terms of his employment.

Q. Would that violation cancel his employment?

A. Yes, he would be working for another employer.

Q. Would that be the terms of your contract with employees: if they violate the terms of their employment, they are not your employees?

A. Yes, it is.

[22] Q. Do you have any personal knowledge of what alleged violation Mr. Hardwick committed?

A. The two violations would be unauthorized use of equipment, and secondly, he was working for another person. He was an employee of Brada Miller and not any other party. Once he took employment elsewhere, he would no longer be our employee. He could not serve two masters at the same time.

Q. He had been employed by you?

A. Yes, sir.

Q. The equipment was leased through you?

A. Yes, sir.

Q. Are you saying he had no authority to enter into a trip-lease with Transamerican?

A. Yes, sir; he did that on his own and not with our authority.

Q. Prior to this accident on January 22, 1968, was it your usual practice to furnish your men with some kind of written authorization or statement that they were authorized to enter into a trip-lease with another company?

A. It is our stated policy that they are not authorized to enter into a trip-lease with another company.

Q. Would they be given some authority to carry this authorization?

A. Let's clear this up: I think your original question was: would they be given a written authorization to carry to **[23]** enter into trip-leases.

Q. That is your interpretation. My question was: when you gave them authority to enter into a trip-lease with another company—that does occur; does it not?

A. Yes, sir.

Q. On those occasions, did you give them some kind of form? Would that be prepared by the terminal of the firm?

A. It would be on a written form.

Q. Do you personally know of any occasion where the drivers entered into trip-leases with another company without a written authorization?

A. I wouldn't have knowledge of any occasion.

Q. Do you personally have knowledge that all of your drivers had written authorizations to enter into trip-leases with another company when they did?

A. No.

Q. Did you ever publish a notice to your drivers prior to January 22, 1968, that they would not enter into trip-leases with another company unless they had a written authorization from your company?

A. It is spelled out in the I.C.C. regulations in Ex Parte 43. It is common knowledge through the United States that you do have to have authority from the carrier leasing the equipment.

[24] Q. What I am trying to get at is how evidence of that authority were evidenced to another carrier when it is entered into. Is there a notice to the other companies? At that time were those companies notified that the driver must present them with something in writing from your company before the driver has written authority to enter into a written agreement?

A. I would say that would be up to the individuals or the companies' authority, of what they want to accept.

Q. Is there anything in the I.C.C. regulations that the driver has the right to enter into such an agreement and not present that written notice to the other company?

A. I am no authority on that; I wouldn't know.

Q. How would Transamerican know that your driver was not cloaked with that authority to enter into trip-leases without a written agreement? How would they know they didn't have that authority?

A. I'd say he didn't have that authority. I would say that they know, unless they had some means to feel, or that they felt this practice was permissible by the other company.

Q. Was any disciplinary action taken against Driver Hardwick for this unauthorized act?

A. No. We had no knowledge of the deed when he left our employ on June 1, 1968. He wasn't our employee when our first knowledge came. It would have been a waste of **[25]** paperwork to do anything then.

Mr. Koester: Off the record.

(Discussion off the record.)

Q. Was your name or your trucking company's name—that is, Brada Miller's name—on that tractor at the time of this accident on January 22, 1968?

A. I would have no knowledge.

Q. You don't know?

A. No, I don't know.

Q. Was that tractor then carrying an operator's authority number or permit number on the equipment at the time of this accident on January 22, 1968?

A. I would have no knowledge of that.

Q. If you do give the authority to a driver to enter into a trip-lease agreement, the manner in which he would enter into this agreement and the kind of lease he would sign and the kind of signature he would make: was that all the same as was made by this Hardwick fellow? In other words, he wouldn't sign it as an agent for the company or have any authority to, would he?

A. I would think so. Agency would be given with the written authority.

Q. (By Mr. Reinert) But your assumption is that he would sign his name.

A. I would think so.

[26] Q. (By Mr. Koester) You haven't seen them signed in any other way?

A. I wouldn't think. I haven't seen a driver write it "Per authorization from D. F. Rayl" or anything like that.

Q. Was Hardwick paid anything by you other than the percentage of each trip when he operated as your employee?

A. That was all he was paid, a percentage of each trip. I might clarify that and say that he is paid in conformance with the union contract; there might be a provision in there for his motel bill or something like that, where he would be reimbursed.

Q. The question I was asking: I don't think I have seen drivers with a payload from you where you would make any profit from that load and he would be paid nothing.

A. That's right.

Mr. Koester: I have no further questions.

Further Cross-Examination

By Mr. Reinert

Q. Mr. Rayl, I just have a very few questions. Transamerican could have verified any authorization that Mr. Hardwick repre-

sented he had, by simply calling the management of your company; couldn't they?

A. Yes.

Q. Was that done?

A. No.

Mr. Reinert: I have no further questions.

[27] Redirect Examination

By Mr. Voorhees

Q. Mr. Rayl, during the course of our questions and answers, you have mentioned the union contract as being controlling on the pay of the men. Do you have a copy of that? I guess that would be back in your home office, wouldn't it?

A. No, I don't carry a copy of it.

Q. I would assume that the different drivers would have their own copies.

A. It would be their privilege; they are members, so they would have copies.

Q. Where would a copy of that contract be available?

A. On this particular driver, I assume from Local No. 299 of the Teamsters at Detroit, Michigan.

Q. Other than the written contract you have with the Teamsters, is there any written agreement or employment contract between you and the drivers?

A. No.

Q. Do you issue any written rules or instructions to the drivers?

A. They are given instructions during their hiring process. There is probably some written material at the time that is given to them and much verbal instruction.

Q. When you mentioned the hiring process, what are you talking about?

[28] A. When a man is placed in our employment, he goes through an indoctrination process where he is made familiar with our company and our rules and regulations and what is expected of him.

Q. Where was this indoctrination done in this case?

A. Where he was hired; Detroit, Michigan.

Q. You wouldn't go through any indoctrination in Kokomo?

A. No, in this particular case it would be entirely at Detroit.

Q. Who would give this indoctrination?

A. Mr. Tobias.

Q. Do you supply the terminal managers with any written materials that they are to supply your drivers with?

A. They are supplied, yes.

Q. Do you know what that written material is?

A. I do not know completely what it is.

Q. Do you have any information as to what that is?

A. They have the employment application, and they are instructed on the proper usage of the log book.

Q. Is this a written instruction?

A. Written and verbal. I say it is written, because the log book has written instructions telling you how to use it, and I say verbally because you go through the regulations and show him our orders and instructions and how to keep out of **[29]** trouble, and the pay applications; what they look like, how they are to be completed, and to follow the instructions. Again, he is given the instruction that he is not allowed to go anyplace without a written authorization.

Q. Is this a written instruction to him, or is this an oral instruction to him?

A. I would say both written and verbal; it is part of his instructions.

Q. Have you seen the written forms that Brada Miller follows in giving instructions to drivers?

A. I say I have. I am going back many years to when I was hiring. There had been written instructions when I was hiring, but I don't know what was given to him.

Q. Who would instruct your terminal managers of how they would instruct the drivers?

A. Myself, Mr. Valdon, the president of the company, and Mr. Barnes. We just finished a meeting Sunday, but in our meetings we instruct them and bring them up to date and so on.

Q. Is anybody else in Detroit in charge of the terminal there where Mr. Tobias makes his instructions?

A. The gentleman who is our district manager, Mr. Fred Moore, who is capable of handling Mr. Tobias' duties.

Q. Is the terminal open and operating 24 hours a day?

A. Yes, it is.

[30] Q. Surely Mr. Tobias isn't there 24 hours a day.

A. We don't do any hiring and instructing when he is not there.

Q. Do you know who would be in charge of the terminal when Mr. Tobias is not there?

A. We have several people there, but I wouldn't know their names.

Q. Do you know how long he has been with the company?

A. He has been with us four years.

Q. Has he been in Detroit the entire time?

A. Yes.

Q. Do you know what his experience has been before that?

A. I know he had several years employment in the trucking industry.

Q. Do you know who his employer was?

A. No, I don't.

Q. It wasn't Transamerican?

A. No, I don't know who he worked for.

(Signature of the witness waived by agreement among counsel for the parties.)

In the United States District Court
Southern District of Illinois
Southern Division

(Title omitted in printing)

Deposition of Ronald William Temperley
taken January 30, 1973

[3] RONALD WILLIAM TEMPERLEY

having first been duly sworn, was examined and testified on his oath as follows:

Examination

By Mr. Leritz

Q. Will you state your name, please?

A. Ronald William Temperley, T-e-m-p-e-r-l-e-y.

Q. How old are you?

A. 51.

Q. Where do you live?

A. K-e-n-n-e-t-t Square, Pennsylvania, the address, Deer Path Road, R.D. #2.

Q. What large city is that near?

A. Philadelphia.

Q. How far is it from Philadelphia.

A. Roughly 26 miles.

Q. What is your telephone number at home?

A. 444-1086. The area code is 215.

Q. You are a married man?

A. Yes.

Q. Your wife's name?

A. Barbara.

Q. How long have you lived there?
A. Five months.

Q. Where did you live before that?
[4] A. In Delaware for three months.

Q. By whom are you employed, sir?
A. Transamerican Freight Lines.

Q. Is that a corporation?
A. Yes.

Q. Incorporated in what state?
A. I believe in Delaware.

Q. What is the nature of Transamerican's business?
A. We are in the general commodities, steel and perishable, between various points, we transport these goods.

Q. What is your position with the company?
A. I'm a district field supervisor for the Eastern Region.

Q. What is your business address?
A. 2905 E. Allegheny, Philadelphia, Pennsylvania 19913.

Q. How long have you had that position?
A. Since March 1, last year.

Q. '72?
A. Right.

Q. Okay. Just very briefly, tell me what your duties are?
A. Well, my duties consist of going from terminal to terminal and making sales calls with the various personnel, also checking the records and getting into the various facets of the way they are operating and, if possible, to aid the managers in the field.

Q. How long have you been employed by Transamerican?
[5] A. Seventeen years.

Q. How long have you been in the Philadelphia office?
A. Well, since March 1st—I commuted up there til we moved in June.

Q. Where was your employment before that?

A. Then I was district field supervisor of the Western Region, the Mid-western Region.

Q. Where were you located then?
A. Chicago, I lived in Joliet, Illinois.

Q. How long were you in Chicago?
A. Two years.

Q. Before that what were your duties?
A. Before that?

Q. If not your duties, your position.
A. The same title in Chicago.

Q. Before Chicago?
A. I was in Detroit as a district field supervisor.

Q. For how long were you a district field supervisor in Detroit?
A. About a year, roughly.

Q. Now, Mr. Temperley, this deposition is being taken in a case that arose out of an accident that occurred in Illinois on January 22, 1968. You are familiar with the fact of that accident, are you not?
A. Yes.

Q. Were you employed by Transamerican at that time?
[6] A. Yes.

Q. What was your position with Transamerican?
A. Terminal manager, Detroit Steel Division.

Q. What was your address?
A. At that time, 28799 Brook Circle, Gross Ile, Michigan.

Q. I mean your business address.
A. 17516 Dix Avenue, Melvindale, Michigan.

Q. Is Melvindale a suburb of Detroit?
A. Yes.

Q. How long had you held the position as terminal manager with Detroit Steel Division, prior to January, '68?

A. Well, about twelve years, I believe.

Q. What were your duties as terminal manager?

A. Well, my duties as terminal manager were many. Basically, though, I was on the street in sales. That was the main field of my endeavor.

Q. I presume you were in overall charge of operations at this particular terminal?

A. I was—yes, I was, in a sense, but I was out of the office many times, you know, so that it was run in my absence by competent personnel.

Q. Now, just tell me what the Detroit Steel Division terminal was, what went on there?

A. You want to know how a steel terminal operated?

Q. Just briefly what was done there.

[7] A. Well, in essence, it is an office and we have a drivers' room in the rear, we have a parking lot for the trucks, naturally we have communications between ourselves and the—by phone, to the various customers, which, in our division, were basically the steel mills in the area, although we are not confined to just hauling steel, we haul other articles, and our dispatchers would come in in the morning and, after they had been properly broken in, they would know how to bill, they would know how to make an inspection, they would know how to read a log, they would know how to get on the phone and tell the mills that we had various pieces of equipment and what directions they were going in. They would be able to take calls from the mill and then decide what type of truck would fit what type load, and then bill the truck out and send it on its way after it was properly inspected.

Q. Now, just very briefly, if a steel mill called and had a load of steel to be transported from Detroit to Kansas City,

and wanted a truck, and a trailer and a driver, you would furnish the equipment and driver; is that correct?

A. That's correct.

Q. And did Transamerican own power units?

A. Not in the Steel Division.

Q. How were your power units acquired?

A. The brokers, as we call them, they own the tractor and the [8] trailer, and then they are put under lease to us.

Q. Did you have any power units under lease for more than 30 days, at that time?

A. No—well, our lease is a self-perpetuating 30 day lease.

Q. I'm asking you that, as opposed to a single trip lease, you had long term leases and single trip leases?

A. It is a self-perpetuating 30 day lease which can be broken by either party within a 30 day period.

Q. Did you have drivers that were employed by Transamerican?

A. Did I have drivers?

Q. Yes. Were drivers employed by Transamerican to make these trips? I'm not referring specifically to this particular trip.

A. We have a peculiar situation. We have owner-operators. They own and operate their own equipment. In some cases, the owner will not drive it but we will get an operator to drive it who will then pass our tests in order to drive.

Q. Were those drivers that you referred to, were they employees in any cases of Transamerican?

A. Were the drivers employees?

Q. Right.

A. Well, they were issued a paycheck by Transamerican.

Q. Were withholding taxes withheld from their paychecks?

A. Yes.

Q. Was Social Security paid on behalf of them?
[9] A. Yes.

Q. Was—did they fill out any application, any employment application?

A. Yes, there had to be an employment application before—if they were a permanent leased operator.

Q. Did Transamerican give these persons, these drivers, directions where to go and pick up steel or other commodities and where to take it?

A. Yes.

Q. In addition to the owner-operated units, did you have any units that you operated under a single trip lease?

A. Yes, we did single trip lease.

Q. Is there a distinction between the owner-operated units under a self-perpetuating lease and a single trip lease?

A. We cut a certain type lease for them which they sign.

Q. In operation, there is a difference between a single trip lease and the self-perpetuating lease or permanent lease?

A. Yes.

Q. Can you tell us very briefly what the difference is?

A. Well, the permanent lease—I will put it this way, the single trip lease is only good for the length of the trip.

Q. All right.

A. It is signed off at the end of the trip when the man brings all his papers in. At that time the lease is terminated.

Q. Would the single trip lease be made with a broker or with **[10]** whom might it be made?

A. Well, it would be made with the driver.

Q. Directly with the driver?

A. You bring the driver in and he has the necessary documents, and if he passes muster, then he is single trip leased.

Q. What are the necessary documents?

A. Well, basically, you have to have a chauffeur's license, you have to have a physical, and you have to produce logs and——

Q. Logs showing what?

A. Showing what—we ask them for a seven day log period. They have to show us what they did in the last seven days.

Q. What is the purpose of that?

A. So that we don't come up with a back-to-back trip lease, which is illegal.

Q. A back-to-back trip lease would mean a—two trip leases running in a row on the same——

A. But you can do this if you are going in the same direction he is moving.

Q. Without getting into the details, that is the purpose of it, to avoid any legal violation; is that right? You want his logs to show——

A. Yes.

Q. I understand. To show that it is not a back-to-back trip lease?

A. That's right, or anything. We check on there. If it is so, **[11]** then we don't use it.

Q. In addition to the chauffeur's license, the logs, I think—or report in lieu of logs; is that correct?

A. Yes, and a physical.

Q. Anything else?

A. Yes. We have him produce the registration for the tractor and trailer.

Q. What is the registration?

A. Well, whatever state it is registered in, whatever state that the equipment is registered in. In other words, if he is plated in Ohio, he will have an Ohio registration.

Q. That is a document of some kind?

A. We take a picture of it. We want to prove that he has power of attorney to run this equipment.

Q. Does the registration show that he has some type of power of attorney?

A. If he has the registration, then we feel that he has the right to move the equipment.

Q. You mean to lease the equipment out?

A. Right.

Q. Did you require, in January, 1968, any written authority from the owner or the lessee of the—or the lessor of the truck?

A. No.

Q. You took the word of the driver and the documents that you **[12]** have described?

A. Right.

Q. As the basis for making a trip lease?

A. Right.

Q. Now, did you—were you familiar with the—with truck brokers or power unit brokers by the name of Mawby, M-a-w-b-y?

A. No.

Q. Have you ever heard that name?

A. After this incident occurred.

Q. After January 22, 1968?

A. That's right.

Q. Do you know whether or not prior to January 22, 1968 Transamerican ever leased any trucks belonging to May Mawby or Earl Mawby?

A. Not to my knowledge.

Q. Have you or has someone on your behalf checked the records of Transamerican to determine if there are any records showing leases of Mawby equipment prior to January 22, 1968?

A. Well, we have——

Mr. Voorhees: Let me interject here, I don't know that he has checked them but the records have been checked.

Q. (By Mr. Leritz) At least you have been informed that they have been checked?

A. Yes.

[13] Q. You have been informed that they had been checked, that the records have been checked?

A. Yes.

Q. And that there are no records of equipment leased from—that were owned by the Mawbys prior to January 22, 1968?

A. Yes.

Q. Now, can you give me some idea what percentage of your trucks were operated on trip leases, what percentage of your runs were trip lease runs?

A. No.

Q. Was it as much as 50 percent?

A. We wouldn't be that high, no.

Q. Something less than 50 percent?

A. Way less than 50 percent.

Q. I think you might have answered this, you didn't—Transamerican didn't own any power units, itself?

A. In the General Commodities Division, yes, but not in the Steel or Perishable Divisions which I operate out of.

Q. Now, did Transamerican have operating authority conferred upon it by the Interstate Commerce Commission?

A. In what respect?

Q. Well, did the Interstate Commerce Commission——

A. Well, basically——

Mr. Voorhees: I'm not sure that this witness is qualified to answer that. If he knows, certainly, go ahead and answer the question.

[14] A. I don't know whether they had it conferred. I do know that from time to time Transamerican will buy an authority of another truck line and then we'll go before the I.C.C. and we operate it temporarily until we are shown that we can operate it permanently, and then we are given permanent authority. This is no different than any other truck lines in the U.S.: that's how we grow.

Q. (By Mr. Leritz) Having been in the truck business for 17 years or more, can you tell me whether or not it is a requirement of Federal law or regulation that before a trucking line can operate in interstate commerce it must have some type of authority or permission from the I.C.C.?

A. Yes. You can't just start a truck line up. You must have authority, as you put it.

Q. You must have authority. Now, under the I.C.C. regulations, can a truck line operate anywhere in the country or is it limited to certain routes?

A. All right. Within our confines, we are confined to a certain operating area, the highways are defined and also where we can pick up and deliver. However, any other truck line, if you want to start a truck line, and you own a factory, let's say, and you have a product that you are sending throughout the country, you don't have to have authority, you are allowed to ship your own—in other words, your own goods.

Q. Your own goods?

[15] A. Right. And also you are allowed to pick up your own goods for delivery to your plant, no matter where it is in the country. When you get into the authority, that is what I mean by—well, it is a situation that is——

Q. Was Transamerican, in January, 1968, a common carrier?

A. Yes.

Q. It did not ship its own goods?

A. No.

Q. As a matter of fact, as you described it, the Detroit Steel Division shipped steel of producers or suppliers from one point to the other?

A. That's right.

Q. Therefore, from what you have told me, it was required that Transamerican have operating authority from the Interstate Commerce Commission to go to certain points throughout the country?

A. Right.

Q. And did it have authority to go from Detroit to Kansas City?

A. Yes, we do.

Q. In 1968, January?

A. Yes, we do.

Q. Was that authority limited to certain routes, or could you take any route from Detroit to Kansas City?

A. I don't know on that for sure now. I do not know that we had **[16]** the major highways and I couldn't see any reason why anybody would get off the major highways when you are going in a direct line.

Q. Are you aware or do you know whether or not a truck line, Transamerican, in, for example, its operating authority across the state of Illinois, has certain routes on which it must operate or can it operate on any route, do you know?

A. I'm going to say I'm not familiar with Illinois, that much. I do not know there are designated routes, I will put it that way, but I have to have this in front of me because authorities are very, very complex.

Q. You are aware that truck lines do have designated routes?

A. That's correct.

Q. Under I.C.C. regulations they are supposed to stay on those designated routes?

A. That's correct.

Q. Did I ask you if you had authority to transport steel from Detroit to Kansas City?

A. Yes, you did.

Q. And I think you said yes?

A. Yes, I did.

Q. Did you have a terminal in Kansas City in January, 1968?

A. Yes.

Q. Who was in charge of that terminal?

A. Frank Trotta, T-r-o-t-t-a.

[17] Q. Is he still in charge of that terminal?

A. He is at present in charge of our General Commodities Division in Kansas City. He is still there.

Q. Now, when a truck came in on trip lease basis, I want to get the mechanics of this, I'm not trying to pin you down now to this particular instance, how would you normally get a truck on a trip lease basis, would a truck just show up at your door or would you know where to go when you needed one?

A. Sometimes they would show up at the door but basically we would know where to go.

Q. Where might you go?

A. We might, for instance, call Brada Miller and ask them if they had any extra equipment that they wanted to trip lease to us.

Q. Prior to January, 1968, did Transamerican have occasion to trip lease equipment that was either owned or leased to Brada Miller?

A. Yes.

Q. Did you, yourself, participate in any dealings with Brada Miller prior to January, 1968?

A. I possibly did, but to pinpoint them, I can't.

Q. Do you have any specific recollection that you dealt with Brada Miller in trip leasing their equipment prior to January, 1968?

Mr. Voorhees: You mean by, **[18]** specifically, you mean as to a person, a date, an instance?

Q. (By Mr. Leritz) No, I mean that you actually know you did.

A. I would say yes because I recall like getting a call—now, whether we used the man or not, I don't know, but he would say, do you have any extra freight, which is the way you start operating a trip lease.

Q. Who would?

A. The driver.

Q. The driver, himself?

A. He would call and say do you have any extra freight. Under the normal way of answering, we would say, well, where do you want to go? They would say, so and so. Who are you with? Brada Miller. Where are you at? We don't know but perhaps we may later. If you can get released, we'll use you.

Q. Do you have any recollections that you ever had any conversations or conferences with anybody at Brada Miller's office with regard to trip leases prior to January, 1968?

A. No.

Q. The dealings would have been with the drivers, themselves?

A. Mine were, yes.

Q. Yours were?

A. Right.

Q. Do you have any information, as opposed to personal knowledge, any information that anybody with your company had any **[186]** dealings with the people at the Brada Miller office prior to January, 1968, with regard to trip leasing?

A. You mean I would specifically have to state that they did call at a certain time?

Q. Just information. Is it your understanding or information that——

A. It is my understanding that previous to this, that they had called Brada Miller for extra equipment.

Q. You are talking about Brada Miller's office?
A. And we call other lines too.

Q. But you don't have any personal knowledge of this?
A. No. In fact, I never called Brada Miller.

Q. Who would be the person, prior to January, 1968, who would have called Brada Miller if such were the fact?
A. The dispatchers or the office manager.

Q. Who was the office manager?
A. Frank Wiley.

Q. Is Mr. Frank Wiley still with the company?
A. No, he isn't.

Q. Do you know where he is now?
A. Yes, he is in Kenosha, Wisconsin operating—or has a franchise, Baskin Robbins ice cream store.

Q. You don't know his address?
A. No.

Q. How about Mr. Emery, who was he?
[20] A. He was our night dispatcher.

Q. And Wiley was——
A. ——the office manager.

Q. Are there any other persons who you believe may have had direct contact with the Brada Miller office prior to January, 1968, with regard to trip leasing?
A. I would have to go in the personnel files and see who I had at that time.

Q. Is there anybody whose name you can recall who is still with your company?
A. Well, it is possible that Kenneth Rariden, who, at present, is our perishable manager here in Detroit, he was my dispatcher here at the time.

Q. What is his name?
A. Kenneth R-a-r-i-d-e-n.

Q. Have you ever seen any correspondence between Brada Miller and Transamerican prior to January, 1968, with regard to trip leasing?
A. Not until July of '68 when they sent us the letter that they didn't want us using their equipment.

Q. That was the first time that you——
A. The first time, to my knowledge, that we had any correspondence with Brada Miller.

Q. And—when you took a truck in on a trip lease, for a single trip, were there certain requirements that you were obliged **[21]** to fulfill before you could use that truck, certain things that you were required to do, such as inspection, etc.?
A. Yes.

Q. Just tell me what those things were.
A. Well, we made a physical inspection of the truck.

Q. That was required by the Interstate Commerce Commission regulations or do you know?
A. No. We did that, ourselves.

Q. Were you familiar——
A. ——but the I.C.C. said that we must perform this type service, however, they didn't say we had to perform it each trip. But we did this for the safety of the motoring public and the driver and so on.

Q. Were you generally familiar with the I.C.C. regulations regarding lease and interchange of vehicles?
A. Lease and interchange?

Q. Yes, were you generally familiar with those regulations?
A. Well, in a general way, yes.

Q. Does that Section 1057 have any meaning to you?
A. Not a thing.

Q. Who would have been the person responsible for seeing that Transamerican complied with the various I.C.C. regulations at that time?
A. That would be Mr. DeLong's department.

Q. Is he still with the company?
[22] A. Yes.

Q. What is his first name?
A. Nelson.

Q. Nelson?
A. DeLong, yes.

Q. What was his position with the company?
A. Well, he was the head of our safety and compliance department.

Q. I presume that the people responsible for actually taking the trucks in under a trip lease and dispatching them out had been made aware of the I.C.C. regulations to the extent necessary to see that the trucks complied with them?
A. Yes, yes.

Q. And you mentioned an inspection that was made to comply with the I.C.C. regulations?
A. Yes, we have a copy of it.

Q. Were there any other regulations that come to mind—I'm sorry, were there any other things that come to mind that had to be done?
A. Well, the documentary evidence that I spoke of earlier.

Q. That is from the driver, himself?
A. Yes.

Q. Anything else that comes to mind?
A. Not offhand, no.

Q. Was it required, if you know, that any identification be [23] put on the truck showing that the truck was a Transamerican truck?
A. That's true, we placard the truck.

Q. What did you do now?
A. Placard.

Q. P-l-a-c-a-r-d?
A. Yes.
A. A placard has a list on the side—you have probably noticed it on a truck—where it lists states and numbers as our operating authority through these states.

Q. Does the—what is the placard made out of?
A. Well, I would say a heavy cardboard. Could be plastic, depending upon the company who is using them, you know.

Q. You mean the company that is using them, like Transamerican, in this instance?
A. Right.

Q. Are they temporary, to be affixed temporarily?
A. Yes, only for the length of the trip. When a man completes the trip, they are handed back into the terminal that he goes into.

Q. So if a man were driving a trip lease, a single trip from Detroit to Kansas City, the truck would be placarded in Detroit and he would turn the placard in at Kansas City, that terminal?
[24] A. Right.

Q. Did the placards have a serial number on them or are they in series?
A. Yes, they are. They have a number on them.

Q. Do you know offhand what some of your numbers were —well, strike that. I'm going to ask, how are those numbers obtained?

A. I don't know how they are obtained. I know they are on the placard is all.

Q. Are they issued by the I.C.C., or under any regulations of the I.C.C.?

A. No. I think it is for our own identification, really.

Q. Are they in series?

A. I would say yes in the sense that if you—we have a five digit number, they would run in series, you know, and there are two placards to a set.

Q. One for each side?

A. Right.

Q. Are they put on the door in the normal manner?

A. They are taped on the door. We use masking tape and tape them on the door.

Q. They would most likely then cover up any painting or lettering that would be on the door; is that correct?

A. It wouldn't cover it all, though. That is not necessary to do.

Q. Getting back to the numbers, are the numbers just internal **[25]** numbers used by your company, or do you know?

A. I don't know. I believe so.

Q. But it could be that they are issued by some operating authority?

A. As far as I know, I don't believe so.

Q. What else does the placard have on there?

A. Has our name.

Q. Which is Transamerican?

A. Transamerican Freight Lines, Inc.

Q. Anything else?

A. Other than the, like I mentioned before, there is nothing else.

Q. You mentioned something?

A. I said the states and numbers, the operating authority number that I.C.C. issued to us.

Q. I see. The operating authority number?

A. Right.

Q. Is that one single number?

A. Well, what do you mean by one single? Like one, two or——

Q. No. Did Transamerican in 1968 have a single operating——

A. No, each state shows an operating number.

Q. Each state shows an operating authority number?

A. That is on the placard. I should get a placard and show you.

Q. Can you do that?

A. Sure.

[26] (Short recess.)

Q. (By Mr. Leritz) Mr. Temperley, you have obtained a placard at my request, have you not?

A. Yes, I have.

Q. Will you read the top couple lines of the placard?

A. "Operated by Transamerican Freight Lines, Inc., Detroit, Michigan."

Q. Under Detroit, Michigan, what does it—is there a number?

A. I.C.C.-MC10761.

Q. Is that I.C.C.-MC10761, is that a number that has been assigned to Transamerican Freight Lines, Inc.?

A. Yes.

Q. By the I.C.C.?
A. I would assume so because I.C.C. is the I.C.C.

Q. Do you know what that number indicates?
A. No, I don't.

Q. Is that number on all your placards?
A. Yes, it is.

Q. Now, your placards, I notice, are about two and a half feet long and 18 inches or so, maybe two feet wide?
A. Give or take.

Q. And they are made of plastic or paper?
A. Or paper, right.

Q. In addition, the placards have a list of several states with numbers behind them?
[27] A. Right.

Q. Now, on the righthand side of one placard there is a number 7554. Is that an official number of any kind?
A. No, that was a company number.

Q. Are you aware that the I.C.C. regulations required such a placard while a truck was in operation?
A. Yes.

Q. Under your authority?
A. Yes, a trip lease truck has to have this; our own trucks are usually lettered or decaled.

Q. With the same type of——
A. No, this is a trip lease deal and every company has their own trip lease placards.

Q. If a truck is under a permanent lease, what type of placard would it have?
A. Normally, they decal those or, if the men want to, they can get a sign painted and paint all this on.

Q. But it does have this same——
A. Exactly the same.

Q. That is on the placard?
A. Yes.

Q. Okay. Now, do you know whether or not that is put on —strike that.

When a trip lease truck is being operated from—under your authority with a placard like **[28]** that on it, do you know whether or not that trip is being operated—strike that. I will get back to that later. Strike that entire question.

Now, getting back to this accident of January 22, 1968, I understand that the man operating the truck was named Howard L. Hardrick? You are familiar with that fact, are you not? You have become familiar with it?
A. I've become familiar with it, yes.

Q. Do you know Mr. Hardrick?
A. No.

Q. You have never met him?
A. No.

Q. Did the name mean anything to you prior to January 22, 1968?
A. No.

Q. Did the name Mawby mean anything to you prior to January 22, 1968?
A. No.

Q. Were you aware, prior to the fact of this trip, that this trip was to be taken?
A. No.

Q. Do you know who Mr. Hardrick reported to and who assigned the trip to him?
A. I would say Mr. Wiley. Are you talking Transamerican?

Q. Right.
A. I would say Mr. Wiley.

[29] Q. We have some documents that have Mr. Emery's name on them?

A. Yes.

Q. I think you testified that Mr. Emery was the night dispatcher?

A. Yes.

Q. Did he work in conjunction with Mr. Wiley or at a different time?

A. No, no, they overlapped. In other words, I think Mr. Emery came in around noon and worked til 8:00 o'clock at night. Mr. Wiley came in at 8:00 o'clock in the morning and worked til 5:00 in the evening.

Q. Did Mr. Wiley have authority to sign trip leases on behalf of Transamerican?

A. Yes.

Q. Did Mr. Emery have authority to sign trip leases on behalf of Transamerican?

A. Yes.

(Temperley Deposition Exhibit 1 marked for identification.)

Q. (By Mr. Leritz) Mr. Temperley, I'm going to hand you what has been marked Temperley Deposition Exhibit 1 and ask you if you can identify that document?

A. Yes, I can.

Q. What is that, sir?

A. That is the trip lease agreement form for—that we cut with authorized carriers.

[30] Q. Can you identify that particular lease? Have you ever seen it before?

A. This particular lease here, have I seen it before?

Q. Right.

A. You mean the lease form or——

Q. As it is filled out.

A. As this is filled out?

Q. Right.

A. I saw it after, I believe, for a brief perusal of it, after the——

Q. You have seen it, in any event?

A. I probably have glanced at it, yes.

Q. Now, it is executed on behalf of Transamerican by whom?

A. Bruce Emery.

Q. It is signed by Bruce Emery?

A. Yes, it is.

Q. Do you recognize his signature?

A. Yes, I do.

Q. Can you tell us where Mr. Emery is now?

A. No, I can't.

Q. Has he terminated his association with Transamerican?

A. He left, and I would have to look in the records to tell you the exact termination date.

Q. Give me the approximate date.

A. I can't.

[31] Q. Has it been within the past year or so?

A. Oh, no, this happened shortly after this. I mean, I would say that it had to happen—now, I will tell you why I'm putting this together, if you recall, we were discussing W-2 forms?

Q. Right.

A. And he said that we had to get the W-2 forms out by the end of January, you recall that this morning?

Q. Yes.

A. Then I have—or had at one time Mr. Emery's W-2 form so I would say on the basis of my getting that, that he

would have left our employ possibly the early part of February in '68.

Q. In '68?
A. Yes.

Q. Okay. You have no idea of his whereabouts?
A. He completely vanished.

Q. Did Mr. Emery have authority, on behalf of Transamerican, to execute that trip lease?
A. Yes, he did.

Q. Now, is the trip lease form that we are looking at, is that a form of trip lease that was ordinarily used by Transamerican Freight Lines, Inc.?
A. With an authorized carrier, yes.

Q. Was it prepared by Transamerican or someone on Transamerican's **[32]** behalf?
A. You mean the form, itself?

Q. Yes, sir.
A. That is a standard form with all companies and they are all the same, practically.

Q. Okay. Was it printed by Transamerican?
A. Yes, it would be printed by Transamerican. You notice Transamerican Freight Lines, Detroit, Michigan, on top, they print these forms, but the basic of this is that every company that has trip leasing has this form.

Q. At the time, in January, 1968, did you have any other forms that you used for trip leases with authorized carriers?
A. No, not authorized carriers; exempt carriers, yes.

Q. How many forms—I'm sorry, how many copies of the trip lease were made out for each trip?
A. You have me there, I don't know just exactly how many copies there are.

Q. More than one?
A. Yes, there are more than one.

Q. I notice this is marked number 2?
A. Yes. I could probably get you a trip lease form and then we could count the numbers and show you——

Q. Maybe we can do that later.
A. All right.

Q. Now, does this trip lease show the points between which **[33]** the trip was being made?
A. Yes.

Q. What are those points?
A. Detroit, Michigan, to Kansas City, Missouri.

Q. Was this trip being made between those two points under the operating authority of Transamerican?
A. Yes.

Q. Under the I.C.C. operating authority?
A. That's right.

Q. Okay. And you will note that there are two boxes on the right center of the lease?
A. Yes.

Q. One shows I.C.C.—I'm sorry, lessor's I.C.C. docket number?
A. Right.

Q. What is that number?
A. M.C. 29079.

Q. Do you know whose docket number that is?
A. That is Brada Miller's.

Q. Do you know the significance of that?
A. No, I don't.

Q. Do you know what a docket number is?
A. No, I can't explain a docket number.

Q. The other—what does that box show?
A. That shows our placard serial number.

[34] Q. Will you read that?
A. Transamerican placard serial number 9329 has been affixed to said vehicle.

Q. Now, does that indicate that the placards which we have been discussing—I'm sorry—does that refer to the placards that we have been discussing?
A. This refers to the placards that were issued to this truck at the time of the loading.

Q. And that is that cloth or plastic or paper placard that is affixed to the side of the truck?
A. Yes.

Q. And shows that it is operated by Transamerican Freight Lines, Inc.?
A. Yes.

Q. And is the number 9329, is that a number of a placard that belongs to Transamerican?
A. It is a set. There would be two placards numbered 9329.

Q. All right. Was each placard numbered in series?
A. I would say yes.

Q. Would there be any other placard numbered 9329?
A. Well, they come in sets, so there would be two of them.

Q. Aside from the set, any other set of placards 9329?
A. I don't think there would be.

Q. Okay. Do you have any reason to believe that the placard numbered 9329 was not, in fact, affixed to this truck for **[35]** this trip lease?
A. The placard is affixed at the terminal before the man goes to pick the load up.

Q. So there is no question, in this particular case, the placard was affixed?

A. When we sent him down for the inspection—before we sent him down for the inspection we had to put the placard on.

Q. Is any record of a trip, not involving an accident, a record of a trip, is there any record of that made and sent to the Interstate Commerce Commission?
A. No.

Q. In other words, there is no requirement that every time a trip is made, some type of record be sent to the I.C.C.?
A. No.

Q. Do you know whether or not the placard numbered 9329 was turned in by the driver at the Kansas City terminal?
A. No.

Q. Do you know where placard number 9329 is?
A. No.

Q. Do you know whether or not it is still in existence?
A. I would assume it is not in existence.

Q. But it could be used over again, could it not?
A. Yes.

Q. It wouldn't necessarily be destroyed after every trip?
A. No, not until it had outlived its usefulness.

[36] Q. Now, referring to the back of exhibit 1, Mr. Temperley, at the bottom I note it shows receipt for return of equipment to owner. Will you tell us what the significance of that is?

A. Well, when the time they signed the receipt, then that means that the equipment is no longer under trip lease to us.

Q. What is the date of that—does that show the return date?
A. It shows 24th of January, 1968, 1:00 P.M.

Q. And where was it?
A. Kansas City, Kansas, H. L. Hardrick, it looks like, I'm not sure.

Q. Do you have a terminal in Kansas City, Kansas?
A. Yes.

Q. Where is that located in Kansas City, Kansas?
A. I don't know. We would have to pull that out. I don't have the address.

Q. Do you also have a terminal in Kansas City, Missouri?
A. We have—in that area we would have, at that time, three terminals. We would have a perishable terminal, steel terminal and general commodities terminal. If any of them are in Kansas City, I'm not aware of it.

Q. At the time that this receipt was signed, the placard would have been turned over to Transamerican?
A. Yes.

Q. I also notice that the trip lease on the back contains a [37] vehicle inspection report which is not filled out.
A. Yes.

Q. Can you tell us why that was not filled out—I presume it is because of this one?

Mr. Voorhees: That's what I say.

Q. (By Mr. Leritz) I'm not trying to trick you, I just want to make the record clear.
A. No. We have our own form.

Mr. Leritz: Could you mark that, please?

(Temperley Deposition Exhibit 2 marked for identification.)

Q. (By Mr. Leritz) Mr. Temperley, I'm going to hand you what has been marked Temperley Deposition Exhibit 2. Can you tell us what that is?
A. That is a driver compliance and vehicle condition report.

Q. What is the significance of that?
A. To see that there are no major defects with the equipment.

Q. Is that made out on every trip leased truck?
A. Yes.

Q. Can you tell, from looking at it, whether or not it refers to the trip lease, Exhibit Number 1?
A. Yes.

Q. Is Exhibit 2 signed on behalf of Transamerican?
A. Yes.

[38] Q. By whom was it signed?
A. I signed this.

Q. Do you recall signing that?
A. Not offhand. I sign these because I'm certifying that the person who makes the inspection is qualified. In other words, I went down to this particular gas station and made sure that their mechanics were qualified to perform this necessary operation, so that I would pre-sign these.

Q. You didn't go down for each examination?
A. No, I didn't.

Q. I notice Mr. Emery's name is also signed on the exhibit, Exhibit 2?
A. Right.

Q. As what?
A. He is certifying that the outbound inspection was made.

Q. I see. Is it necessary that this form, or a similar form, be filed with the I.C.C., with respect to each separate trip?
A. This has to be on file when the I.C.C. comes in to examine our trip records, this must be part of the exhibit.

Q. It is not necessarily sent in to the I.C.C.?
A. No, it isn't.

Q. With regard to Exhibit 1, the trip lease, itself, is a trip lease of that kind sent in to the I.C.C.?
A. No, it isn't.

[39] Q. Is that also on file for examination by the I.C.C.?

A. Yes.

Q. Under what circumstances or why would the I.C.C. examine these records?

A. To see that we are in compliance with the regulations.

Q. Are all such exhibits examined, or only certain ones or how does it work?

A. I don't know how—I'm not in the I.C.C., I don't know just how—I know they do come in, I have been present, but we just turn the records over to them. Whether they check them all individually, or whether they spot-check them, we just let them go and we are available for answering questions.

Q. How long are they kept, normally?

A. I believe there is a certificate of destruction and we are allowed to destroy them after a given number of years, I would say about five years.

Q. When a driver operates one of your trucks on a trip for you, he is required to make out driver's logs, is he not?

A. Yes.

Q. Can you tell us what a driver's log is?

A. Oh, yes. It is a record of his driving, how long he has been on the road, and he is only allowed to drive ten hours in a 24 hour period, then he must take an eight hour break.

Q. Are these logs prepared pursuant to some I.C.C. regulation?

A. Yes.

[40] Q. Are they kept for a period of time?

A. Yes. They are kept with the—in the safety and compliance department here with the other records that are necessary for the trip.

Q. Do you have a separate file on each trip? Do you keep a separate file on each trip?

A. We have our own file, yes, of each trip, and we send certain paper work and I imagine they have a——

Q. What is "over here"?

A. The main office in Detroit. We send certain paper work over here and it is all compiled together. In other words, when it comes over here, part of it will come to the safety and compliance department, and part will go to the payroll department. I'm sure each department has a way of filing things as we, at the terminal level, have a way of filing ours. If you ask me, at the terminal, to pull a certain trip number, to look at, I could go to the files and pull this and hand it to you.

Q. Now,—do you want to mark these.

(Temperley Deposition Exhibits 3 through 7 marked for identification.)

Q. (By Mr. Leritz) I'm going to hand you what has been marked Exhibit 3, Mr. Temperley, and ask you if you can tell us what that is?

A. It is a statement in lieu of logs.

[41] Q. What is a statement in lieu of logs?

A. It shows the number of hours that the man worked previous to coming into a trip lease agreement with us.

Q. Is that form a form required by your company before it will enter a trip lease with the driver?

A. Yes.

Q. And is there a signature on that?

A. Yes, there are two signatures on here.

Q. Whose are they?

A. Bruce Emery and H. L. Hardrick, the driver.

Q. You can identify Bruce Emery's signature?

A. Yes.

Q. Okay. And let me see it, please. Was this document, Exhibit 3, received by your company from Hardwick at the time this trip lease was executed?

A. This was received from Hardrick prior to his going to pick up the load, yes.

Q. Okay. What is the date of it? Does it have a date?

A. 1-18-68.

Q. Now, I'm going to hand you exhibits——

A. Wait a minute, there are two dates on that. There is a date up here, 1-29-68 and 1-18-68.

Q. I'm going to hand you exhibits which have been marked 4, 5 and 6. These appear to be photostats. Can you tell us what they are?

[42] A. They are the driver's daily log.

Q. How many of them are there, all together?

A. There are six of them here.

Q. Can you tell us the dates shown on them?

A. 1-19-68 through 1-24-68.

Q. Are those copies of the logs required by the I.C.C.?

A. Yes, they are.

Q. By whom are they signed?

A. The driver.

Q. Mr. Hardrick?

A. Yes.

Q. Do they show the name of the carrier?

A. Yes, they show Transamerican on here.

Q. In each instance?

A. Yes.

Q. Were these driver's daily logs received by Transamerican with respect to this trip lease that we have been discussing?

A. Yes.

Q. When would Transamerican have received them?

A. Well, they received—let me see here. These were received after the trip.

Q. Where would the driver be required to turn those in?

A. Kansas City.

Q. Did he turn them in there?

A. I would say yes, he did turn them in there, but there is **[43]** no identification in here that says he did.

Q. Are those kept as part of your records, under the I.C.C. regulations? A. Yes.

Q. They are kept with the trip lease and the inspection report?

A. In the safety and compliance department.

Q. In other words, those records are subject to inspection by the I.C.C.?

A. Yes.

Q. Now, I hand you what has been marked Temperley Deposition Exhibit 7. Can you tell us what that is?

A. It is a driver's log.

Q. Is that a copy or an original?

A. I have no way of knowing.

Q. Well, is it on an original form?

A. It is on an original form, yes.

Q. And was that received by Transamerican?

A. I would say it is in our possession, therefore we received it somewhere along the line.

Q. What is the date of it?

A. 1-22-68.

Q. Who would there—who, in your company, would be able to identify that, if anyone?

A. In what way?

Q. Stating that it was received by your company from Hardrick?

[44] A. Well, I would say that Frank Trotta at Kansas City, he, or one of his assistants.

Q. Now would, in the normal course of business or operations, how would these logs come to Detroit from Kansas City?

A. They would be mailed in.

Q. By Trotta?

A. Yes. Each terminal mails these at the end of the day.

Q. And then, of course, you would keep them as part of your file?

A. Kept here in Detroit, yes.

Q. I want to call you attention to the log dated 1-22-68, being part of Exhibit 4 and 5. I would like you to compare it with Exhibit 7. Do they both have the same date?

A. Yes, they do.

Q. Do they both purport to be for the same day and trip?

A. Yes.

Q. Are they different logs?

A. Yes.

Q. Can you explain why that is so?

A. I would say that probably he was told to make copies of his trip. We probably need extra copies, and he had written on this one, and we don't need this on here, all we need is this, at the scene of accident, and we are making accident reports for the I.C.C. anyways, so I imagine that was the reason. I'm not positive but I would believe that would, **[45]** believe that would be the reason.

Q. Can you tell me whether or not, from the fact that this Exhibit 7 is on an original form, whether or not that was made here in the Detroit area or at your Detroit terminal?

A. There is no way for me to tell you where this was made.

Q. It might have been made in Kansas City or it might have been made here?

A. Or made anywhere.

Q. Would anyone, to your knowledge, know that?

A. Not to my knowledge, no.

Q. Do you know at whose request Exhibit 7 was filled out?

A. Could have been anyone.

Mr. Voorhees: I assume Hardrick would know that.

A. He would know who had to make out the extra copies.

Q. (By Mr. Leritz) I was wondering if you were aware that anyone with your company knew?

A. No. As I say, when you are making out accident reports, sometime you have to get everything you can so it is not uncommon to duplicate.

Q. Now, I'm going to hand you a—I'm sorry—I think I will have two more exhibits marked.

(Temperley Deposition Exhibits 8 and 9 marked for identification.)

Q. (By Mr. Leritz) I'm going to hand you what has been marked **[46]** Exhibit 8 and ask you if you could identify it?

A. Yes, that is a telephone report of an accident.

Q. Is it part of the records of Transamerican Freight Lines, Inc.?

A. Yes.

Q. Can you tell us where it was received—sorry, can you tell us from whom it was received?

A. From Howard Hardrick.

Q. Do you know who prepared that form?

A. No—E. Swain, it says on the form.

Q. Is E. Swain an employee of Transamerican?

A. I don't know who E. Swain is.

Q. Are you aware of any requirement of the I.C.C. that accidents involving motor carriers must be reported to that Commission?

A. Yes, they must be reported.

Q. Is there a certain form that is required?

A. Yes.

Q. Do you know the form number offhand?

A. No, I don't.

Q. I'm going to hand you what has been marked Temperley Exhibit 9 and ask you if you can identify that.

A. Yes, it is a motor carrier accident report.

Q. What is the form number shown on there?

A. Form M.C.S. 501955.

Q. Was that form completed by—who was that form completed **[47]** by?

A. J. Dwight Nash.

Q. J. Dwight Nash at that time was an employee of Transamerican?

A. Yes.

Q. As part of his—what were his duties at that time?

A. Mr. Nash was director of compliance.

Q. Compliance with——

A. ——Transamerican Freight Lines.

Q. With I.C.C. regulations?

A. Yes, he would deal with I.C.C. regulations and also would inspect our trucks.

Q. Did Mr. Nash complete that form pursuant to his duties as an employee of Transamerican?

A. Yes.

Q. And was that form or a copy or an original of that form filed with the I.C.C.?

A. Yes.

Q. What is the date of that form?

A. He shows 5-17-68.

Q. Do you know why the time lapse between January, 1968 and May, '68 for the filing of this?

A. I have no idea.

Q. All right. I think you did say a copy of this was sent to the I.C.C.?

A. Yes.

[48] Q. Mr. Temperley, can you tell me the significance of that tear-off sheet at the bottom of Exhibit 9?

A. Well, I—it is a receipt, it says here "it is acknowledge of your accident report."

Q. Do you know where it was supposed to be sent after it was torn off?

A. I would say this was made out in duplicate, and this is a copy, as you can see, and the original went to the I.C.C.

Q. Are you aware of any correspondence between your company and the I.C.C. regarding this accident on January 22, 1968?

A. No.

Q. Do you know whether or not a request was received from the I.C.C. for the completion of this form?

A. No.

Q. Did I ask you whether or not you received a medical report on this driver, Hardrick, before he started work with—started this trip lease?

A. Yes, we did.

Q. Do you have that?

A. No, but it is noted on the form. I don't have it.

Q. Do you know whether or not it is still in possession of the company?

A. We should have it somewhere, yes.

Q. Did you have anything to do with preparing a check dated January 24, 1968, to Brada Miller Freight System, Inc?

[49] A. I might have pre-signed that check. It is a two signature check, right?

Q. There is a Robert Woody and Frank Trotta?

A. Not that check. That check was prepared in Kansas City.

Q. You personally would have had nothing to do with the authorizing of it or preparing it?

A. No, not that particular check, no.

Q. It has been indicated in Answer to Interrogatories that your company issued numerous checks—not numerous—issued certain or some checks payable to Brada Miller prior to January 22, 1968 for trip leases?

A. That's right.

Q. Have you ever seen any of those checks?

A. Yes, I would have seen them. But, to specifically say this one was issued on June 9, 1962, I could say no. I would see them in the normal course of a working day.

Q. In the normal course of business, would those checks be sent to the Brada Miller office or would they be given to the driver?

A. They were at that time given to the driver.

Q. Do you know where those checks are now, the originals?

A. No, I don't know where they are.

Q. Are they in possession of your company?

A. As far as I know, they are in the possession of our company, yes.

[50] Q. What bank were those checks written through?

A. Manufacturer's Bank.

Q. Where is that located?

A. In Detroit.

Q. Do you——

Mr. Voorhees: The Manufacturer's National Bank of Detroit.

Q. (By Mr. Leritz) Does your company have any records showing the numbers of those checks or the dates of those checks?

A. I would say yes.

Q. Do you know the nature of those records?

A. No.

Q. Are they here in Detroit?

A. I don't have anything to do with records except at the terminals, we would have a copy of the stub, and a copy of the check, if they hadn't been destroyed in the normal course of events.

Q. Do you know whether or not the stubs are still available?

A. We would have to go to the terminals and find out.

Q. They would actually be kept at the terminal?

A. That's right.

Q. In this particular case, Melvindale, Michigan?

A. We would have a copy of the check, itself, at the terminal.

Q. A photocopy or a——

A. No, no.

[51] Q. A carbon copy?

A. A carbon copy that would be kept at the terminal.

Q. It won't show an endorsement, of course?

A. No, but it would be showing who it was made out to.

Q. Without marking as an exhibit—marking these as exhibits, Mr. Temperley, I'm holding here a document which has been described to me as a Scrip or Trip Record or Pay Scrip.

Can you tell me whether or not you have such a record for the trip involving Howard Hardrick out of which this incident arose?

A. We do, yes, Transamerican has a copy.

Mr. Leritz: Do you have that?

Mr. Voorhees: Yes.

Mr. Leritz: Can I take a look at it now before I finish up with Mr. Temperley?

Mr. Voorhees: I think——

(Short recess.)

(Temperley Exhibits 10 through 14 marked for identification.)

Q. (By Mr. Leritz) I'm going to hand you Temperley Exhibit 10 and ask you if you can tell us what that is?

A. That is a Trip Record.

Q. What is a Trip Record?

A. It is the necessary information to—well, that the man carries in his possession in order to effect payment when he **[52]** delivers his load.

Q. Now, you have, in hand, what appears to be a carbon copy, do you not?

A. Yes.

Q. Can we take a look at it?

A. It is copy number 3.

Q. Do you know how many copies of this form there would be?

A. I think there are five copies all together.

Q. Where is the original?

A. The original is sent to the payroll department.

Q. Here at this address that we are at right now?

A. Yes.

Q. So the original would be here; is that correct?

A. Yes.

Q. Okay. Now, this is copy number 3. What is done with copy number 3?

A. The driver takes this with him, there are a couple other copies too, and one is the driver copy and one is the owner copy. This is completed on the other end. He is then paid at that time.

Q. Where is this form, Exhibit 10, filled out?

A. It is partially filled out at the origin terminal and completed at the destination terminal.

Q. In this particular case, this shows the name to be Howard L. Hardrick, does it not?

[53] A. Yes.

Q. Was this form, Exhibit 10, filled out here in Detroit or at Melvindale?

A. Melvindale.

Q. At Melvindale, Michigan—at the time that this trip started?

A. I would have to look at the bill, the freight bill copies.

Q. Let me ask you a few more questions about this then.

A. I was going to tell you why.

Q. Let me ask you a few more questions about this.

In any event, the driver carries this copy with him to his destination?

A. This and a couple of others, yes.

Q. I know there is a signature down at the bottom, under the printed word approval, whose signature is that?

A. Frank Trotta, our terminal manager at Kansas City at this particular time.

Q. Is that his signature?

A. Yes.

Q. How did this particular copy get back into the hands of the Detroit office, was it mailed by Mr. Trotta?

A. Yes.

Q. I know at the top it shows the name, owner, and then it has, Brada Miller Freight System, Inc., May Mawby, down below, and then 17628 Colgate, Dearborn Heights, Michigan; is that **[54]** not correct?

A. Yes.

Q. Does it appear to you that there is a difference in typing between May Mawby and Brada Miller?

A. Yes.

Q. The typing of May Mawby is a carbon typing, is it not?

A. Yes.

Q. Does it not appear that the typing of the name Brada Miller is an original typing?

A. Yes.

Q. Do you know whether or not the name Brada Miller was added at sometime subsequent to when this was originally filled out?

A. This could have been a mistake on Emery's part. He actually hadn't learned all he knew and this could have been placed on there by the terminal that he went into. This is not an uncommon occurrence where—if these things are not completed correctly. Therefore, in order to get this on the complete copy, you would have to get the other copies that were sent to the main office. But they, at the other end, knew that this trip lease was coming in, it had to be with a trip lease carrier and it was showing on the trip lease form that Brada Miller was the authorized carrier trip leasing this, so I would assume that Frank Trotta or one of his people put this on.

[55] Q. All right. Do you know, was May Mawby an authorized carrier?

A. What?

Q. Is May Mawby—you refer to authorized carrier——

A. If she is, I don't know.

Q. You mentioned that Kansas City knew this trip was coming in. How would they know about that?

A. We have a teletype system.

Q. Do you have any records showing——

A. We wouldn't have those records, no.

Q. Where would those records be?

A. Well, our teletype sheets, we usually destroy those within, well—you hold them maybe a year and then throw them away. You have seen teletype paper, you roll reams of that.

Q. Do you have any copy of any written message to Kansas City with regard to the——

A. No——

Q. This—this trip?

A. We have a dispatcher, and each evening or the following morning, he would show as being enroute to Kansas City and as estimated time of arrival would be put on there.

Q. You don't have a copy of that?

A. No, sir.

Q. It has been destroyed?

A. Probably.

Q. Now, I note—what is the gross rental shown on this **[56]** Exhibit 10?

A. The gross rental is $420.00.

Q. I notice it shows total deductions of how much?

A. One hundred seventy-five dollars and then the check which was issued to Brada Miller of $225.25.

Q. What does total deductions mean?

A. That is the advances up here, what they have done, they had added these two together. He was issued a check, 054939 for $100, and 047154 for $75.00.

Q. Who was issued such a check?
A. The driver.

Q. How was the check made out?
A. In the name of the driver.

Q. Was that issued to him at the Melvindale terminal?
A. Yes, it was.

Q. Before he started?
A. Right.

Q. What was that for?

A. That is for fuel, that is for lodging, that is for food, that is in the event of a breakdown, that he has money that he can buy parts or have the necessary repairs made.

Q. Now, do you know whether or not this check for $225.25 was given to the driver at the Kansas City terminal?

A. I have no idea what they did with the check at the Kansas City terminal. I have seen a copy of the check. All I know, **[57]** it was made out to Brada Miller.

Q. Do you know what the usual procedure at the Kansas City terminal was?

A. I don't know.

Q. What is the usual procedure here?
A. Our procedure was to give the check to the driver.

Q. I notice under, on the lower righthand corner of the form it says, "instructions. Driver to follow certified routes only."
A. Right.

Q. Is that a common instruction to put on this type of form?
A. Yes, it is.

Q. Whose certified routes would they be?
A. Ours.

Q. Transamerican?
A. Right.

Q. Would the driver in the normal course of business be instructed as to what those routes were?

A. He would have a copy of our authority. He would know where they are.

Q. He wouldn't have, of course, a copy of your entire authority, he would be given just enough information to take him to his destination?

A. Correct.

Q. Do you have a form of that?
[58] A. Yes, we have forms.

Q. You have a form of that?
A. Yes.

Q. Do you have a form showing the instructions that were given to Mr. Hardrick in this case?

A. No, they would be verbal. He would be told that these are the routes that we take and he was to follow those routes.

Q. He would be given something written, would he not?

A. We have a regular, like you say—it is not a form, it shows the authority within the state.

Q. Would this form that Mr. Hardrick woud be given, would it take highway so and so to so and so and then highway so and so to so and so?

A. Yes.

Q. Do you have a copy of that?
A. No.

Q. Do you know if there is a copy of that in existence?
A. Yes, at each terminal.

Q. Where would it be located in the normal course of events?

A. They would have it in a file cabinet, when the proper time came up, such as a trip lease, they would produce the necessary documents so he would know which routes to run.

Q. I'm talking particularly with regard to the trip we have been discussing?

A. Yes.

[59] Q. Do you know where a copy of that completed form is?

A. You mean the form that he had? He would turn this in. We have a safety packet too that he carries and he would turn this in at the termination of his trip.

Q. Maybe I misunderstood. Is the form showing——

A. I will tell you what you are getting at.

Q. Yes.

A. There is no form. There is no such thing as take I-16 to I-19 to W-34, there is no such form as that.

Q. Explain it again to me then.

A. There is no such form as that.

Q. What does he receive?

A. He receives a copy of our authority within that state which clearly states what highways can be used.

Q. Does he turn that in?

A. At the end of the trip.

Q. At the end of the trip?

A. Right.

Q. He is required to follow that?

A. That is why we put that on there.

Q. Now, I hand you what has been marked Temperley Exhibits 11, 12 and 13 and ask you if you can tell me what those are?

A. Those are copies of the freight bills. One is the rate audit copy, one is the consignee memo and another freight audit copy, but—that is why I wanted to say this **[60]** previously.

Q. Explain it, if you will.

A. Because he went out on what we call the weight and charge billing.

Q. What does that mean?

A. That means that he was given all this material and that he was given this pick-up slip at the mill, after all the proper avenues had been covered, and he went to the mill and we were not able to, at this time, to cut the freight bill.

Q. What does that mean?

A. Well, we cut a revenue pro. This is a revenue pro, this pro here.

Q. Exhibit 11?

A. Yes, it is what we call a revenue pro.

Q. What is that short for?

A. Well, see here, this is what he ran with.

Q. Exhibit 13?

A. And the pro on that is 9327982. Now, upon completion of his trip, he also had this bill of lading.

Q. Where did he receive the bill of lading?

A. At the mill.

Q. That is Exhibit 14?

A. Right. When he arrived in Kansas City, they cancelled this bill, this was merely——

Q. This bill being Exhibit 13?

[61] A. Exhibit 13 was cancelled because it was not a revenue pro. This is normal procedure. Now, they, in turn, put in the proper—see, there was no way for us to know in Detroit how many bundles he had or approximately what weight—we show approximately 44,000. We see that he carried 44,250, so when you go to the mill, they approximate just about how much weight you are going to get, so you never know exactly. So he ran on this. Now, he can deliver on this——

Q. This, being Exhibit 13?

A. Yes. There was a copy that he leaves with the consignee but he, when he arrived at Black, Slaybaugh's and Bryson in

Kansas City, he would fill in the number of pieces and the correct weight.

Q. I see.

A. And then the customer would sign that he received such a thing. He would keep one copy and give one copy back to the driver. The driver, in turn, takes this copy back in to us, along with this bill of lading. From that we cut what we call a revenue pro to bill for our money, and we cancel the bill he ran on.

Q. Okay. Now, one or two more questions, you have indicated earlier that there was some question, some doubt in your mind that these truck drivers generally were employees of yours; is that correct, or did I misunderstand you?

[62] A. No, you never heard me state that.

Q. Some of the truck drivers were employees of Transamerican; is that correct?

A. Well, the permanent leased operators are our employees, yes.

Q. They are your employees?

A. Yes.

Q. Do you ever have a person who is not a permanent leased operator, just a simple truck driver, who would come in and get a job with you, without bringing equipment along?

A. No.

Mr. Voorhees: Is that true of all divisions?

A. We are speaking of this, aren't we?

Q. (By Mr. Leritz) What is this now?

A. We are discussing this particular case now.

A. We are discussing this particular case here, aren't we, I mean, in essence?

Mr. Voorhees: That question was not limited to the steel division.

A. I thought we were discussing this case here. I mean, again, there are many ramifications too.

Q. (By Mr. Leritz) We have been discussing the Detroit Steel Division?

A. Right.

Q. That was located or is located at 17516 Dix in Melvindale?

[63] A. Correct.

Q. Were any other divisions located there?

A. At one time the perishable division was located there.

Q. How about in January, 1968?

A. No, just the Detroit Steel Division.

Q. And Mr. Wiley was the office manager? A. Right.

Q. He was the office manager only for that division?

A. Right.

Q. Now, did truck drivers make application to Mr. Wiley for employment as drivers with your company?

A. Yes.

Q. Before you would accept a person as a driver for your company, must he bring with him equipment?

A. Yes.

Q. Would you ever accept a driver for your company who came in in a single trip lease, came in for a single trip lease, would he be an employee of your company?

A. No, he would be an employee of the company that he is working for. At no time would he be an employee of ours. We issue our check directly to the carrier that we are working with.

Mr. Leritz: I have one more exhibit. (Temperley Exhibit 15 marked for identification)

[64] Q. (By Mr. Leritz) I'm going to hand you what has been marked Temperley Exhibit 15, Mr. Temperley, and ask you if you can tell us what that form is?

A. Yes. That's a form that we have that, before we hire someone, we send to the company that he is presently working for, or has worked for, to get a reference on.

Q. Now, you will notice there is a signature on that form at the top, in the middle there?

A. Yes.

Q. Whose signature is that?

A. Frank Wiley.

Q. Do you recognize that signature?

A. Yes, I do.

Q. Did he sign that on behalf of Transamerican?

A. Yes, he did.

Q. And before Hardrick could be hired by your company, he would have to present himself with a unit that he was in a position to lease to your company on a permanent lease; is that correct?

A. Yes.

Q. There is no other way he could be hired by your company?

A. No other way he could be hired.

Mr. Leritz: I think that's all. Thank you.

Ronald Temperly—Exhibits

Exhibit 1 p. 29—trip lease with Brada Miller

2 p. 37—inspection report

3 p. 4—statment in lieu of logs

4 p. 41—Drivers logs 1-19 & 1-20

5 p. 41—Drivers logs 1-21 & 1-22

6 p. 41—Drivers logs 1-23 & 1-24

7 p. 43—Drivers logs 1-22-68

8 p. 46—telephone report of acc.

9 p. 46—ICC accident form

10 p. 51—trip record

11 p. 59—Rate audit copy

12 p. 60—consignee memo

13 p. 60—rate audit copy

14 p. 60—bill of lading

15 p. 64—employment application form

[illegible] AGREEMENT

IF COPY — ATTACH TO PAY COPY OF RECEIPT.

THIS AGREEMENT, made and entered into this 19 th. day of January A.D. 19 68, by and between TRANSAMERICAN FREIGHT LINES, INC., a Delaware Corporation, hereafter referred to as the First Party lessee, and Breda Miller Freight System, Inc. whose address is 3120 Leroyo Ave. of the City of Detroit, State of Michigan hereafter referred to as the Second Party, lessor.

WITNESSETH: WHEREAS, First and Second Parties are authorized carriers as that term is defined in the rules and regulations of the Interstate Commerce Commission pertaining to the lease and interchange of vehicles by motor carriers, and

WHEREAS, the Second Party is the owner or holds under a lease for more than thirty (30) days, certain motor vehicle equipment regularly used by it which it desires to lease to the First Party for its use as hereinafter specified.

NOW, THEREFORE, in consideration of the compensation to be paid by First Party to Second Party and the mutual promises, agreements and conditions herein contained, it is hereby agreed as follows:

1. The Second Party hereby leases to the First Party the following motor vehicle equipment to be operated by H.L. Hardrick (Driver's Name) (Soc. Sec. No.) a driver who is duly authorized by the Second Party to execute this Agreement on its behalf, for the movement in interstate commerce for the duration of one (1) single trip beginning at 1:00 P.M. on Jan. (Month) 19, (Day) 1968 (Year), of such freight which First Party shall turn over to Second Party and the Second Party agrees to transport such freight from the place or places where Second Party may receive the same in the City of Detroit, State of Michigan direct to without deviation from authorized routes of the First Party to its terminal in the City of Kansas City, City and State of Kansas Missouri which latter city Second Party represents is in the direction of a point which it is authorized to serve.

DESCRIPTION OF VEHICLES

Type of Equipment	No. of Axles	Make	Year	Engine No.	Serial No.	Weight	License Plates	
							State	Number
Tractor	3	Intl	1963	TD 218379		14220	Mich.	9929 CC
Trailer	2	Brown	1965	TCD 633		11790	Mich.	500-214

2. First Party agrees to pay Second Party and Second Party agrees to accept therefor the following compensation:

BASIS OF PAY FOR TRIP REPORT NUMBER 201 - 4164

RENTAL:

____ MILES AT ____ PER MILE
____ POUNDS AT ____ PER TON } $ ____
73 % OF $ Gross REVENUE
OTHER ____ $ ____
TOTAL $ ____

LESSOR'S I.C.C. DOCKET NO. MC29079

TRANSAMERICAN PLACARD SERIAL NUMBER 9329 HAS BEEN AFFIXED TO SAID VEHICLE

3. Second Party further agrees that it will bear the entire cost of operating said motor vehicle equipment, and that it will at all times keep said motor vehicle equipment in good mechanical condition, order and repair, and will cause said motor vehicle equipment to be operated only by a competent employee of the Second Party, on which event said employee of the Second Party shall be the sole agent, servant, employee or representative of the First Party. It is being expressly understood and agreed that nothing herein is to be construed as constituting Second Party, its agents, servants and employees, as the agent, servant, employee or representative of the First Party.

4. It is mutually understood and agreed, that the First Party during the term of this lease shall assume control and responsibility for the operation of said equipment in respect to the public, shippers and Interstate Commerce Commission for such period that said equipment is operated under the terms of this lease as provided in Paragraph 1 hereof.

5. Second Party further agrees that in the operation of said motor vehicle equipment it will comply with all the rules and regulations of the Bureau of Motor Carriers of the Interstate Commerce Commission, and the applicable rules and regulations of any public utility commission and of any other similar state authority, that it will observe all pertinent rules and regulations governing the hours of service of its drivers of helpers, and all regulations, laws and ordinances of any governmental authority applying to the operation upon the public highways of said motor vehicle equipment that it will pay any and all federal or state withholding taxes, assessments, unemployment insurance, old age benefits, or other social security payments that may be required to be paid by reason of the payment of wages or other earnings to the driver of said motor vehicle equipment, or to any helper, or to any person or persons engaged in the carrying out of this Agreement upon the part of Second Party and further agrees to meet all laws or regulations now or hereafter adopted or promulgated by legally constituted authorities in respect thereto.

6. It is mutually agreed that responsibility of First Party resulting from control and use of said equipment pursuant to Paragraph 4 shall in no way abrogate the rights of the First Party to demand set off and indemnity from the Second Party as set out in Paragraph 9 hereof.

7. It is further agreed that Second Party represents that its employee, agent or servant executing this agreement has full authority to act on its behalf and represents that said person is competent and qualified to perform the vehicle inspection required by the Interstate Commerce Commission regulations.

8. Second Party further agrees to procure and maintain at its own expense adequate fire, theft and collision insurance with respect to the aforesaid motor vehicle equipment and to indemnify and save the First Party harmless from any and all loss, damage or expense arising out of fire, theft, collision, accident or other casualty or event affecting such equipment. In the event the Second Party shall be damaged or lost because of the fault or negligence of the Second Party or the driver designated by said Second Party, the Second Party agrees to pay First Party for said loss or damage to said trailer. The Second Party further agrees to indemnify and to hold the First Party harmless from all loss and damage to property belonging to or leased by the First Party and from all losses and claims for damage to cargo that shall be occasioned or caused by the negligence or fault of the Second Party or the driver or operator of said equipment designated by the Second Party.

9. It is mutually understood and agreed by and between the parties hereto that First Party shall not be responsible to Second Party, its agents, servants and employees, for any negligence of the Second Party, its agents, servants or employees, or for any loss, damage, injury, or expense arising out of the failure of Second Party to carry out the terms of this Agreement. Second Party hereby agrees to indemnify and save harmless First Party from any and all claims, suits, losses, liens or other expenses arising out of, based upon or occurred because of claim by any person or persons for damage to property sustained or which may be alleged to have been sustained by reason of any negligence or alleged negligence on the part of Second Party, its agents, servants or employees, or for loss or damage to cargo resulting from any negligence or unlawful act of Second Party, his agents, servants and employees. It is mutually understood and agreed that Second Party will defend, at his own expense and cost, any and all suits that may be brought against First Party for injuries sustained, including death resulting therefrom, or damage to property caused or alleged to have been caused by any negligence of any person employed by Second Party while engaged in the performance of any of the work required by the terms and conditions of this Agreement, and for any cargo loss sustained resulting from any negligence or unlawful act on the part of Second Party, his agents, servants and employees. Nothing in this Paragraph 9 contained shall be construed to in anywise limit the liability of the Party of the First Part to the public in connection with the use of said equipment under this Agreement.

10. It is mutually understood and agreed that upon the termination of this Agreement, the Second Party will forthwith remove from said motor vehicle equipment all paints, signs or other evidence of certificate numbers of persons belonging to First Party, and deliver the same to said First Party, together with any other property of First Party that may be then in the possession of Second Party, including collections and C.O.D. charges.

11. First Party has caused an inspection to be made of the aforesaid motor vehicle equipment, the results of which have been certified upon the report attached to a copy of this lease, which discloses that the same is equipped with all parts and accessories necessary for its safe operation in accordance with the Safety Regulations of the Interstate Commerce Commission.

12. The First Party, by signing this Agreement acknowledges receipt of the motor vehicle equipment specifically described in Paragraph 1 above on the date and at the time therein set forth.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed in quadruplicate on the date set forth below.

Temperley Depo Ex I
W.R. 1-30-73.

Date Jan. 19, 1968

TRANSAMERICAN FREIGHT LINES, INC.

Location 17526 Dix Road, Melvindale, Michigan (Detroit, Michigan area)

Per B. Emery (First Party)

Breda Miller Freight System, Inc. (Owner of Motor Vehicle Equipment)

By [signature] (Authorized Agent) 233

Second Party

Form 481 - Rev. 11-67

VEHICLE INSPECTION REPORT

TRANSAMERICAN INTERIM CORPORATION — LESSOR'S INSPECTION

ITEM
1. REPORT OF VEHICLE INSPECTION
2. EVERY ITEM MUST BE CHECKED EITHER "NOT DEFECTIVE" OR "DEFECTIVE" WITH DESCRIPTION OF DEFECT

Tractor Color ____ Trailer Color ____

Van ☐ Low side ☐ Open Top ☐ Flat Bed ☐

TRACTOR OR TRAILER				TRACTOR OR TRAILER			
ITEM	NOT DEFECTIVE	DEFECTIVE	DESCRIPTION OF DEFECT	ITEM	NOT DEFECTIVE	DEFECTIVE	DESCRIPTION OF DEFECT
BODY				BODY			
BRAKES				BRAKES			
BREAKAWAY				BREAKAWAY			
LOW PRESSURE INDIC.				LOW PRESSURE INDIC.			
COOLING SYSTEM				COOLING SYSTEM			
DRIVE LINE				DRIVE LINE			
DIFFERENTIAL				DIFFERENTIAL			
FIRE EXT., 1-1-1/2 QT., FULL				FIRE EXT., 1-1-1/2 QT. FULL			
3-FLARES OR ELEC. LANTS. (RED)				3-FLARES OR ELEC. LANTS. (RED)			
3-FUSEES				3-FUSEES			
2-RED FLAGS, WITH STAND.				2-RED FLAGS, WITH STAND.			
SPARE LIGHT BULBS				SPARE LIGHT BULBS			
SPARE ELECTRIC FUSES				SPARE ELECTRIC FUSES			
TIRE CHAINS				TIRE CHAINS			
HAND TOOLS				HAND TOOLS			
ENGINE				ENGINE			
EXHAUST SYSTEM				EXHAUST SYSTEM			
FUEL SYSTEM (I.C.C.)				FUEL SYSTEM (I.C.C.)			
GLASS				GLASS			
HORN				HORN			
LICENSE PLATES				LICENSE PLATES			
PERMIT NOS.				PERMIT NOS.			
LIGHTS (STATE WHICH)				LIGHTS (STATE WHICH)			
REFLECTORS				REFLECTORS			
SPEEDOMETER				SPEEDOMETER			
SPRINGS				SPRINGS			
STEERING				STEERING			
TIRES				TIRES			
WHEELS				WHEELS			
WINDSHIELD WIPER				WINDSHIELD WIPER			
TURN SIGNALS				TURN SIGNALS			

ANY OTHER ITEMS REQUIRING ATTENTION

I hereby certify that on the ____ day of ____ 19____ I carefully inspected the equipment described above and that this is a true and correct report of the result of such inspection

(Signature of Person Making Inspection)

I hereby certify that on the date stated above the person who made the inspection covered by this report was competent and qualified to make such inspection and was duly authorized to make such inspection as a representative of TRANSAMERICAN FREIGHT LINES, INC.,

Date ____

(Signature Authorized Carrier or Officer of Authorized Carrier) (First Party)

ANY OTHER ITEMS REQUIRING ATTENTION

I hereby certify that on the ____ day of ____ 19____ I carefully inspected the equipment described above and that this is a true and correct report of the result of such inspection

(Signature of Person Making Inspection)

I hereby certify that on the date stated above the person who made the inspection covered by this report was competent and qualified to make such inspection and was duly authorized to make such inspection as a representative of

Date ____

(Signature Authorized Carrier or Officer of Authorized Carrier) (Second Party)

RECEIPT FOR RETURN OF EQUIPMENT TO OWNER

By completing the above inspection the Second Party hereto specifically acknowledges the return of such equipment to him on this 24 day of Jan. 1968 at ____ a.m. or p.m. at Kansas City, Kansas City State

Received by ____ (Vehicle Owner)

By H.L. Hardrick (Authorized Agent) 234

Form 482 Rev. 11-67

Temperley Depo Ex 3
W. R.
1-30-73

STATEMENT IN LIEU OF LOGS

TERMINAL Detroit Steel

DATE 1-19-68

I Howard L. Herrick 417 48 2 575

THAT THE FOLLOWING INFORMATION IS A TRUE AND CORRECT STATEMENT OF MY DUTY STATUS AND THE HOURS WORKED EACH DAY (LINE 1 A CORRECT ENTRY FOR EACH DAY) FOR THE WEEK ENDING 1-19-68 (DATE) (ITEM) AM PM

DATE	HOURS WORKED	DUTY STATUS EACH DAY
1-13-68	0	
1-14-68	0	
1-15-68	0	
1-16-68	0	
1-17-68	0	
1-18-68	0	

SIGNED [signature] (TRANSAMERICAN EMPLOYEE)

[signature]

BEST COPY AVAILABLE

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SILLY VICKS 1/19/68 1 AM

Tractor Number 4664 | Trailer Number

FAILURE TO COMPLY CAN RESULT IN DISCHARGE

MUST BE FILLED OUT BY DISPATCHER

DRIVER'S LOGS CURRENT AT TIME OF DISPATCH [1] YES
HAS HAD FULL REST REQUIRED [X] YES
HAS AVAILABLE HOURS TO MAKE TRIP [X] YES

DRIVER'S I.D. CARD (FORM 808) NUMBER DATED

DOCTOR'S CERTIFICATE IN DRIVER'S POSSESSION [X] YES

DANGEROUS PLACARDS APPLIED TO VEHICLE [ ]
TRIP LEASE PLACARDS APPLIED TO VEHICLE [ ]

OUTBOUND INSPECTION CERTIFIED TO BY

DRIVER [signature] DISPATCHER

INSPECTED BY [signature] TERMINAL West DATE 1-19-68

IF THIS IS A SINGLE TRIP VEHICLE, THIS SECTION MUST BE FILLED OUT

Name of Owner of Tractor Gary Manby
Make INT. Year 1963
License Number 222466 State Mich.
Name of Owner of Trailer Unit Gary Manby
Make Ballard Year
License Number 700-214 State Mich
If authorized carrier, show the I.C.C. Docket Number MC 29079

ITEM	TRACTOR NOT DEFECTIVE	TRACTOR DEFECTIVE	TRACTOR DESCRIPTION OF DEFECT	SEMI TRAILER OR TRAILER NOT DEFECTIVE	SEMI TRAILER OR TRAILER DEFECTIVE	SEMI TRAILER OR TRAILER DESCRIPTION OF DEFECT
BODY	/			/		
BRAKES	/			-		
COOLING SYSTEM	/					
DRIVE LINE	/					
EMERGENCY EQUIPMENT	/					
ENGINE	/					
EXHAUST SYSTEM	/					
FUEL SYSTEM	/					
GLASS	/					
HORN	/					
TRIP LEASE PLACARD #	/					
LIGHTS (STATE WHICH)	/			-		
REFLECTORS	/			-		
SPEEDOMETER	/					
SPRINGS	/			-		
STEERING	/					
TIRES	/			-		
WHEELS	/			-		
WINDSHIELD WIPER	/					
CROSS BOWS				-		
RIDGEPOLE				-		
TARP				-		
MUD FLAPS	N/A			/		
TURN SIGNALS	-			/		

ANY OTHER ITEMS REQUIRING ATTENTION

I hereby certify that, on the 19 day of Jan 1968, I carefully inspected the equipment described above and that this is a true and correct report of the result of such inspection.

Temperley Depo Ex. 2 WR 1-30-73

JOHNS BROS. GULF SERVICE
16209 DIX ROAD
(Signature of Person Making Inspection) MICHIGAN

IMPORTANT

I hereby certify that, on the date stated above, the person who made the inspection covered by this report was competent and qualified to make such inspection and was duly authorized to make such inspection as a representative of

TRANSAMERICAN FREIGHT LINES, INC.

Date Jan 19 1968 By R. W. Temperley
(Company Official)

IMPORTANT

DEFECTS OCCURRING DURING TRIP (To be filled out by Driver at end of trip.)

ENGINE	TRANSMISSION	DRIVE LINE	LIGHTS	LEAKS TRACTOR	BRAKES - TRAILER	COOLING SYSTEM	OTHER DEFECTS

EXPLAIN DEFECTS | NO DEF | SIGNATURE OF DRIVER

INBOUND INSPECTION

(TRANSAMERICAN EMPLOYEE) (DRIVER)

YELLOW COPY TO ACCOMPANY DRIVER TO DESTINATION TERMINAL AND RETAINED IN FILE
WHITE COPY TO BE FILED AT ORIGIN TERMINAL
EXCEPTION: WHEN SINGLE TRIP VEHICLE IS USED, YELLOW COPY IS [illegible] DEPARTMENT, DETROIT, ATTACHED TO DISPATCH COPY OF SINGLE TRIP LEASE AGREEMENT

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Washington, D. C. Rev. '62 — (One calendar day-24 hours) — DUPLICATE-Driver retains in his possession for one month

1 (Month) 17 (Day) 63 (Year) — 0 (Total mileage today) — Mich 9929CC — 7290-IC1 (Vehicle numbers-Show each unit)

Temperley Depo WK 1-30-73 — 84 — 80 (Total miles driving today)

I certify these entries are true and correct: Howard Hardwick (Driver's signature in full)

Transamerican (Name of carrier or carriers) — (Name of co-driver)

Det (Main Office Address) — Det mich (Home Terminal Address)

	MID-NIGHT 1 2 3 4 5 6 7 8 9 10 11 NOON 1 2 3 4 5 6 7 8 9 10 11 MID-NIGHT	Total Hours
1: OFF DUTY		15
2: SLEEPER BERTH		
3: DRIVING		3
4: ON DUTY (Not Driving)		6
		24

REMARKS: Trip # 41164 — Great Lake Steel — Benn — Ypsilanti

FROM: Det. mich (Starting Point or Place) — TO: Ypsilanti mich (Destination or turn around point or place)

USE TIME STANDARD AT HOME TERMINAL

Washington, D. C. Rev. '62 — (One calendar day-24 hours) — DUPLICATE-Driver retains in his possession for one month

1 (Month) 21 (Day) 65 (Year) — 318 (Total mileage today) — 9929CC — 7290-IC1 (Vehicle numbers-Show each unit)

Temperley Depo 845 WK 1-30-73 — 318 (Total miles driving today)

I certify these entries are true and correct: Howard Hardwick (Driver's signature in full)

Transamerican (Name of carrier or carriers) — (Name of co-driver) Det mich

(Main Office Address) — (Home Terminal Address)

	MID-NIGHT 1 2 3 4 5 6 7 8 9 10 11 NOON 1 2 3 4 5 6 7 8 9 10 11 MID-NIGHT	Total Hours
1: OFF DUTY		17
2: SLEEPER BERTH		
3: DRIVING		7
4: ON DUTY (Not Driving)		
		24

REMARKS: Trip # 41164 — Anderson Ind. — Indianapolis Ind. — Ypsilanti Mich. — Kansas City Mo. Via Indianapolis Ind.

FROM: Ypsilanti Mich (Starting Point or Place) — TO: Kansas City Mo. Via Indianapolis Ind. (Destination or turn around point or place)

USE TIME STANDARD AT HOME TERMINALS

Washington, D. C. Rev. '62 — (One calendar day-24 hours)

(Month) (Day) (Year) — (Total mileage today) — Mich 9929CC — 7290-IC1

(Total miles driving today)

I certify these entries are true and correct: Howard Hardwick (Driver's signature in full)

(Name of carrier or carriers) — (Name of co-driver)

(Main Office Address) — (Home Terminal Address)

	MID-NIGHT 1 2 3 4 5 6 7 8 9 10 11 NOON 1 2 3 4 5 6 7 8 9 10 11 MID-NIGHT	Total Hours
1: OFF DUTY		
2: SLEEPER BERTH		
3: DRIVING		
4: ON DUTY (Not Driving)		

REMARKS: Trip #41164

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(Starting Point or Place) — (Destination or turn around point or place)

USE TIME STANDARD AT HOME TERMINAL

INTERSTATE COMMERCE COMMISSION — Washington, D. C. Rev. '62 — DRIVER'S DAILY LOG (One calendar day-24 hours) — Form approved. Budget Bureau No. 80-R213.3 — ORIGINAL-File each day at home terminal — DUPLICATE-Driver retains in his possession for one month

1 (Month) 22 (Day) 68 (Year) — 70 (Total mileage today) — Mich 9929CC — 7290 IC1 (Vehicle numbers-Show each unit)

70 (Total miles driving today)

I certify these entries are true and correct: Howard Hardwick (Driver's signature in full)

Transamerican (Name of carrier or carriers) — (Name of co-driver) Det mich

Det (Main Office Address) — (Home Terminal Address)

	MID-NIGHT 1 2 3 4 5 6 7 8 9 10 11 NOON 1 2 3 4 5 6 7 8 9 10 11 MID-NIGHT	Total Hours
1: OFF DUTY		12
2: SLEEPER BERTH		
3: DRIVING		2½
4: ON DUTY (Not Driving)		9½
		24

REMARKS: Trip 41164 — Fowlerton Ill. — Litchfield Ill. — had a accident across wire road into the rear of the trailer. I had just begun to get back on the road again from clearing my windshield

FROM: Ypsilanti Mich (Starting Point or Place) — TO: Kansas City mo. Via St Louis (Destination or turn around point or place)

USE TIME STANDARD AT HOME TERMINAL

233

1 (Month) 23 (Day) 68 (Year) — 544 (Total mileage today)

Temperley Depo Ex6 W.R 1-30-73 214

Transamerican

(Name of carrier or carriers)

I certify these entries are true and correct

Howard L Hardwick

(Driver's signature in full)

Det much

(Name of co-driver)

(Main Office Address)

(Home Terminal Address)

	Total Hours
1: OFF DUTY	17
2: SLEEPER BERTH	
3: DRIVING	6
4: ON DUTY (Not Driving)	1
REMARKS	24

Trip # 41164

Terre Haute Smithboro Edwardsville Troy Mo Columbia Mexico

ypsi mich Terre Haute Smithboro Edwardsville

FROM: (Starting Point or Place)

TO: Kansas City mo Via St Louis

(Destination or turn around point or place)

USE TIME STANDARD AT HOME TERMINAL

DO NOT TAKE OUT OF BOOK

NOTICE—Prescribed by the INTERSTATE COMMERCE COMMISSION Washington, D. C. Rev. '62

DRIVER'S DAILY LOG

(One calendar day-24 hours)

Form approved. Budget Bureau No. 60-R293.3

ORIGINAL—Filing driver's home terminal

DUPLICATE—Driver to have in his possession for one month

1 (Month) 24 (Day) 68 (Year) — 167 (Total mileage today)

7290-IC1

Vehicle numbers—Show each unit

167 (Total miles driving today)

I certify these entries are true and correct:

Howard Hardwick

(Driver's signature in full)

Transamerican

(Name of carrier or carriers)

Det

(Main Office Address)

(Name of co-driver)

Det

(Home Terminal Address)

	Total Hours
1: OFF DUTY	17
2: SLEEPER BERTH	
3: DRIVING	5
4: ON DUTY (Not Driving)	2
REMARKS	24

Trip # 41164

Det Toledo Columbia Mexico Kansas City Terminal

Ypsi Det Edwardsville Columbia MO

FROM: (Starting Point or Place)

TO: Kansas City mo

(Destination or turn around point or place)

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USE TIME STANDARD AT HOME TERMINAL

23-68 70

7290 IC1

Temperley Depo 94.7 W.R 1-30-73 71

Transamerican

Det

Howard Hardwick

Det

	13
	2½
	9½
	24

Trip # 41164

Ypsi mich Terre Haute Det Edwardsville at Scene of accident

Kansas City Via St Louis mo

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Temporary Depot

TELEPHONE REPORT OF ACCIDENT

Ex E W/R 1-30-73

DATE AND TIME 1/22/68 7:45AM DATE AND TIME OF CALL 1/22/68 10:20AM

ASSURED'S NAME TAF

DRIVER Howard Hardrick ADDRESS 470 Hawkins, Ypsilanti, Mich.

HOME TELEPHONE _____ TEL. NO. FOR DRIVER AT SCENE Utlaut Memorial Hosp. Greenville, Ill. 618-664-9819

#1 TRACTOR 63 Intl. CO. NO. 7290 TRAILER Brown CO. NO. IC-1

DAMAGE TO ASSURED EQUIPMENT spread axle on trailer twisted

LOCATION OF ACCIDENT Rt. U.S. 40, 1 mile east of Smithboro, Ill.

DESCRIPTION OF ACCIDENT #1 westbound on U.S. 40 and was pulling back on road off the shoulder. #2 struck the left corner of #1 trailer.

taken to hospital - Utlaut Memorial Hospital - Greenville, Ill.

OTHER DRIVER _____ ADDRESS _____

#2 VEHICLE OWNER _____ ADDRESS _____

YEAR 1957 MAKE Pontiac LICENSE 68 Ill. 339220 DAMAGE front end.

OTHER DRIVER _____ ADDRESS _____

#3 VEHICLE OWNER _____ ADDRESS _____

YEAR _____ MAKE _____ LICENSE _____ DAMAGE CLAIMS BY LEGAL DEPT JAN 25 1968 AM 7,8,9,10,11,12 1 2 3 4 5 6

INJURED NAME #2 driver ADDRESS _____

NAME _____ ADDRESS _____

WITNESSES NAME _____ ADDRESS _____

NAME _____ ADDRESS _____

POLICE NAME OF OFFICER AND LOCATION Illinois State Police TICKETS #1-improperly parked vehicle

CARGO steel DAMAGE _____

LOADED FROM Detroit, Mich. SCRIPT _____ DESTINATION Kansas City, Mo.

WHAT HAS BEEN DONE WITH CARGO? _____

WHAT TERMINAL HAS BEEN NOTIFIED? no

ADJUSTER CALLED yes NAME Crossroads Claim Service ADDRESS Effingham, Ill.

TIME CALLED 10:35AM NAME OF ADJ. HANDLING FILE _____

COMMENTS:

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E.Swain

PERSON HANDLING REPORT

1-30-73 Ex 9

Temporary Depot

MOTOR CARRIER ACCIDENT REPORT

1. Name of carrier: Transamerican Freight Lines, Inc. 2. Are you a Class I motor carrier? ☑ Yes ☐ No
3. Principal business address: 1700 W. Waterman, Detroit, Michigan
4. Type of carrier (Common, contract, exempt, private etc.): Common MC No. 10761
5. Date accident occurred: January 22, 1968 Day of week: Mon Hour: 7:30 ☑ A.M. ☐ P.M. ☐ Noon ☐ Midnight
6. Place where accident occurred. State: Illinois County: Bond City: n/a
7. On U. S. 40 (Street or highway name or none) At ☐ Near ☑ Smithboro, Illinois (Intersecting street or highway, house number, bridge, railroad crossing, or other landmark)
8. The run on which this accident occurred began at: Detroit, Michigan (City or town—State) on 1-21-68 (Month—day) at 6:00 ☐ A.M. ☑ P.M.
9. And was intended to end at: Kansas City, Missouri (City or town—State) on 1-24-68 (Month—day) at 1:00 ☐ A.M. ☑ P.M.
10. If a turn-around run, the most distant point was intended to be: Not a turn around run. (City or town—State)

YOUR VEHICLE

11. Type of Vehicle	Year Model	Manufacturer's Name	Model and Serial No.	Type of Body	Company No.	Weight Empty	Weight of Payload
Truck (pick-up)							
Tractor	1967	Intl.	FD21837C	Tractor	Extra		
Semitrailer	1965	Brown	TCD63	Trailer	Extra		
Full trailer							
Pole trailer							
(Specify other)							

14. Over-all length of vehicle or combination 52 ft. 15. Kind of cargo at time of accident Sheet steel
16 (a). Number of persons on vehicle (including driver) One 16 (b). Was there a relief driver on this vehicle? ☐ Yes ☑ No 17. Was operation a driveway? ☑ Yes ☐ No
18 (a). Was vehicle equipped with a sleeper berth? ☐ Yes ☑ No 18 (b). Location of berth: ☐ In cab ☐ Other (Specify other location)
19 (a). Is the power unit owned by you (the motor carrier)? ☐ Yes ☑ No 19 (b). If not owned by you, is it owned by the driver? ☑ Yes ☐ No

YOUR DRIVER

20. Name and address: Howard L. Hardrick, 470 Hawkins, Ypsilanti, Michigan (First name) (Street and number or RFD) (City) (State)
21. Age 22 22. Sex M 23. Social Security No. 417-48-2575 24. Length of time employed by you Trip Lease (Years and months)
25. Experience driving motor vehicle 5 yrs. (Years and months) 26. Experience driving engine-powered commercial vehicle 5 yrs. (Years and months) 27. Experience driving type vehicle in this accident 6 yrs. (Years and months)
28. Hours on duty since last 8 consecutive hours off duty 12 hrs. 29. Hours actually driving during period of 8 consecutive hours off duty 12 hrs.
30. Condition of Driver: Sick ☐ Had been drinking ☐ Dozed at wheel ☐ Apparently normal ☑ Physical defect or other condition ☐ (Specify defect or condition)

TYPE OF ACCIDENT

31. ☐ Noncollision—overturned in roadway ☐ Noncollision—ran off roadway ☑ Collision with private car (Pedestrian, private car, truck, fixed object, etc.) ☐ Other (Specify)
32. Did this accident involve fire or explosion? ☐ Yes ☐ No

OTHER VEHICLES INVOLVED. (Use section about for additional vehicles involved)

33. William Wears, Effingham, Illinois (Name of owner of vehicle No. 2) (Address—city and State) Type of vehicle pass. MC— (I.C.C. No., if any)
34. (Name of owner of vehicle No. 3) (Address—city and State) Type of vehicle MC— (I.C.C. No., if any)

WITNESSES.

35. None (Name) (Address) (Age—if by insurance)
36. (Name) (Address) (Age—if by insurance)

(OVER)

BUREAU OF MOTOR CARRIER SAFETY 38-1

Receipt is acknowledged of your report of accident dated January 22, 1968 sent as follows:
Date of occurrence (Month) (Day) (Year) Hour 7:30 ☐ A.M. ☐ P.M.
City or town U. S. 40 n/a Howard Hardrick Illinois
Highway None Driver's - One 2,000.00
Fatalities (Number) Injuries (Number) Property damage, $ (Dollars)
Name of Transamerican Freight Lines, Inc. 10761 (MC Number)
1700 W. Waterman (No. and street)
Detroit, Michigan 48209 (City and State)

This portion to be completed by reporting carrier.

DO NOT DETACH

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(OVER)

The Motor Carrier Accident Report, including the reverse side of this stub, must be completed in triplicate, by the motor carrier. The original and one copy shall be filed with the District Director, Bureau of Motor Carrier Safety, of the district in which the motor carrier has his or its principal place of business (as required by Section 194.5 of the *Motor Carrier Safety Regulations*). The remaining copy shall be retained in the carrier's files.

The original of this stub will be returned to the motor carrier as an acknowledgment of receipt of the report. At the same time, three copies of the accident report form will be sent for the carrier's use in reporting future accidents.

REPRODUCED AND SOLD BY [illegible]

PROPERTY DAMAGE. Enter approximate damage, in dollars, for each vehicle and cargo damaged.

Use another sheet for additional vehicles	Truck, tractor, or bus	Check if total loss	Semitrailer	Check if total loss	Full trailer	Check if total loss	Other type	Check if total loss	Cargo	Check if total loss
37. Your vehicle—No. 1	$		$ 500.00		$		$		$ 00.00	
Vehicle No. 2	$ 1,500	X	$		$		$		$	
Vehicle No. 3	$		$		$		$		$	

Damage to other property: none ($) (Specify property damaged and indicate damage) (Amount)

PERSONS INJURED OR KILLED. (Use another sheet for additional persons injured or killed) (Estimate age if necessary)

38. Name: Sandra K. Weers Address: Effingham, Illinois Age: 23
☐ Killed outright. ☒ Serious injuries. ☐ Died later. ☐ Minor injuries. ☐ Affected by carbon monoxide. ☐ Burned. ☒ Driver. ☐ Relief. ☐ Pedestrian. ☐ Helper. ☐ Passenger. ☐ Other ____ ☒ In vehicle No. 1. ☐ In other vehicle.

39. Name ____ Address ____ Age ____
☐ Killed outright. ☐ Serious injuries. ☐ Died later. ☐ Minor injuries. ☐ Affected by carbon monoxide. ☐ Burned. ☐ Driver. ☐ Relief. ☐ Pedestrian. ☐ Helper. ☐ Passenger. ☐ Other ____ ☐ In vehicle No. 1. ☐ In other vehicle.

40. Name ____ Address ____ Age ____
☐ Killed outright. ☐ Serious injuries. ☐ Died later. ☐ Minor injuries. ☐ Affected by carbon monoxide. ☐ Burned. ☐ Driver. ☐ Relief. ☐ Pedestrian. ☐ Helper. ☐ Passenger. ☐ Other ____ ☐ In vehicle No. 1. ☐ In other vehicle.

41. VEHICLE MOVEMENTS. Vehicle #1 / #2

☒ Straight ahead. ☐ / ☐
☐ Turning right. ☐ / ☐
☐ Turning left. ☐ / ☐
☐ "U" turn. ☐ / ☐
☐ Start from curb. ☐ / ☐
☐ Stopped or parked. ☐ / ☐
☐ Backing. ☐ / ☐ Start from shoulder

Check below if applicable:
☐ / ☐ Jack-knifing.
☐ / ☐ Overtaking.
☐ / ☐ Weaving.
☐ / ☐ Skidding.
☐ / ☐ Wrong side.

42. VEHICLE DEFECTS.
☐ Tires. ☐ Brakes. ☐ Engine. ☐ Lights. ☐ Fuel line. ☐ Coupling. ☐ Steering. ☐ Wheel or part. ☐ Axle. ☐ Spring or part. ☐ ____ (Other)
☒ No defect.

43. ROADWAY.
☒ Straight. ☐ Curve.
☐ On grade. ☒ Level. ☐ Hillcrest.
☐ Dry. ☒ Wet. ☐ Muddy. ☐ Snowy. ☐ Icy. ☐ Oily.
☒ 3-lane. ☐ 4-lane. ☐ 6-lane. ☐ Divided. ☐ ____ (Other)
☒ Lanes marked. ☐ Lanes unmarked.
☐ No road defects. ☐ Holes, ruts, etc. ☐ Loose material. ☐ ____ (Other)

44. LIGHT.
☐ Daylight. ☐ Dark. ☐ Dusk. ☒ Dawn.

45. WEATHER.
☐ Clear. ☐ Rain. ☐ Snow. ☒ Sleet. ☐ Fog. ☐ ____ (Other)

46. DRIVER'S ACCOUNT OF ACCIDENT.
I was pulled off the road to clean my windshield, I started to pull back onto the highway and was almost all the way back onto the highway when Veh.#2 come out of the fog and hit left rear of trailer.

This accident was investigated by: Howard Hardrick (Name of police officer) (Badge No.) (Dept.)

(Driver's name)

47. ACCOUNT BY RESPONSIBLE OFFICIAL OF CARRIER.
In routine audit of our accident register against file we discovered that there had been no indication of our having put filed MCT-5CT on this accident therefore this filing.
Investigation disclosed thatddriver had pulled off the road to clean windshield and started to go again when Veh.#2 traveling fast in heavy fog struck rear of trailer shortly after unit was undoi way.

5-17-68 Director C. Blanco (Date) (Title)

243

FROM [illegible] 201 TO [illegible] 833 1-10-[illegible] DATE

VIA Temperley Depot Ex 10 WR 1-30-73

No. 41164

DRIVER	OWNER
NAME Howard L. Hendrick	Brada Miller Freight System, Inc. Ray Worby
STREET ADDRESS 470 Hawkins	17628 Collegate, [illegible] 369
CITY AND STATE Ypsilanti Mich	Dearborn Hts, Michigan
DRIVERS' SOC. SEC. NO. 417 48 2975	

IF EQUIPMENT BELOW HAS NO ACCOUNTING NUMBER, SHOW THE PERMIT NUMBERS NECESSARY FOR TRIPS THRU NEW YORK AND OHIO

TRACTOR					TRAILER		VIA		
ACCT. NO. OR N. Y. PERMIT	EMPTY WEIGHT	OHIO PERMIT NO.	G/D	AXLES	ACCT. NO. OR N. Y. PERMIT	MAX. GR. WT	CAN	NEW YORK	OHIO
A /C					A/C				

FOR HOME OFFICE USE ONLY

FILL IN FROM BILLS FOR SHIPMENT ON LOAD — SHOW RENTAL PERCENTAGE FOR EACH BILL BELOW REVENUE

									TOTAL
REV. PRO.	9327982	Rev. Pro 9366574	13[illegible]						
WEIGHT	/C	4720	47[illegible]						4720
TRIP REVENUE		548.22	54[illegible]						548.22
RENTAL PERCENTAGE	73								XXXXX

PAY DATA

GROSS RENTAL	400.20
WAGES @ 24%	N/A
3% VAC. PAY (DRIVERS ONLY)	N/A
TOTAL WAGES	N/A

ADVANCES		CITY MAN		MISCELLANEOUS			TOTAL DEDUCTIONS
CHECK NUMBER	AMOUNT	TERM. NO.	AMOUNT	CODE	AMOUNT	DESCRIPTION	
[illegible]	100.00						
[illegible]	75.00						

TRIP LEASE ONLY	GROSS RENTAL	TOTAL DEDUCTIONS	NET REMITTANCE PAID	CHECK NUMBER	DATE PAID	REMITTANCE NO.
	400.20	175.00	225.20	21503	2/24/68	[illegible]

BEFORE DELIVERY DRIVER TO CONTACT
TERMINAL Ecrs Keys
TEL. NO.
PAY OFF ONLY AT [illegible]

INSTRUCTIONS:
Driver to follow certificated routes only

DRIVER MUST SIGN STATEMENT BELOW
I CERTIFY THAT I (WAS ☒ WAS NOT ☐) INVOLVED IN ANY ACCIDENT ON THIS TRIP AND A FULL REPORT HAS BEEN MADE TO TRANSAMERICAN
DRIVER [signature]

APPROVAL
Frank C. Tiletta 2-24-68

TRIP RECORD - STEEL DIVISION

PAY COPY - FWD. TO DETROIT WITH PETTY CASH 3

244

FOR REVISION DEPT. USE

GX AS PAID

ISSUE DIS

AUTHORITY Temporary Depot By 11 W R 1-30-73

RATE AUDIT COPY

Transamerican Freight Lines, Inc.

NATION WIDE SERVICE

AMOUNT PAID

AUTHORITY C/N

BDR NO.

2A

9327988

SHIPPER NAME AND ADDRESS	Cant read - Temporary Depot Used. Aerco Aircraft Michigan	CONSIGNEE NAME AND ADDRESS	Illegible Warehouse 7500 [illegible] Detroit City Michigan Lenox City Co.

ACCTG. TERM	DATE	ROUTING, B/L NO. OR	OWNER'S NAME	EQUIPMENT NO.	TRIP NO.
	1-29-73	1-[illegible]-DATA	Carlisle Body	T/C T/C	T.1 41114

RECEIVABLE AMT.	TFL REV.	ORIGIN CARRIER DUE-REV.	BEYOND CARRIER DUE-REV.	NAME OF BEYOND CARRIER
$47.20	223.20			

ORIGIN	DESTINATION	ACCTG. TERM	TYPE TRAFFIC	COMMODITY	CUST. CODE	INTERCHANGE POINT OR PAYOFF TERMINAL
2J1	225	223	1			

NO. PIECES	DESCRIPTION AND MARKS	WEIGHT	RATE	CHARGES
6	Lifts Steel Sheets	47250	1.16	547.10 Collect
	Canceled out [illegible]			

IC VO PAID DATE

245

Transfer Dep Depot By 12 W R 1-30-73

9327988

[illegible] Carlisle Body T/C T/C T.1 41114

6	Lifts Steel Sheets	47250	1.16	547.10	Collect
	Canceled out [illegible] 9327922				

246

BEST COPY AVAILABLE

FOR REVISE NOTICE USE

RATE AUDIT COPY

Transamerican Freight Lines, Inc.

NATION WIDE SERVICE

CK AS PAID

ISSUE BOB

AUTHORITY

AMOUNT PAID

AUTHORITY C/N

BOB NO.

2A

9327982

Temperley Depo
Ex B WR
1-30-73

SHIPPER NAME AND ADDRESS	CONSIGNEE NAME AND ADDRESS
[illegible]	[illegible]

DATE	ROUTING, B/L NO. OR DATE	OWNER'S NAME	EQUIPMENT NO.	TRIP NO.
1 10 73	[illegible]	[illegible]	[illegible]	[illegible]

RECEIVABLE AMT.	ITL REV.	ORIGIN CARRIER	BEYOND CARRIER	NAME OF BEYOND CARRIER
		DUE-REV.	DUE-REV.	

ORIGIN	DESTINATION	ACCIG. TERM	TYPE TRAFFIC	COMMODITY	CUST. CODE	INTERCHANGE POINT OR PAYOFF TERMINAL
221	225		1			

NO. PIECES	DESCRIPTION AND MARKS	WEIGHT	RATE	CHARGES
	Steel Sheets Approx	44000	1.15	
	For Delvy Only Bols will issue rev bill			

ACCIG. TERM 10 V2 PAID DATE

247

BEST COPY AVAILABLE

[illegible] STRAIGHT BILL OF LADING — SHORT FORM

From GREAT LAKES STEEL DIVISION
NATIONAL STEEL CORPORATION
At ECORSE, (DETROIT), MICH.

DATE

AGENT'S No.

BILL OF LADING No. 1-03-1218
-1215

CONSIGNED TO:

[illegible]

[illegible]

F.O.B. DEL. MILL Carrier or Route [illegible] Time Departed 12:27 AM

COLLECT PREPAID

VEHICLES NOS. TRUCK OR TRACTOR	SEMI-TRAILER	TRAILER	NUMBER OF PACKAGES	DESCRIPTION PER BILL OF LADING	WEIGHT	FREIGHT RATE	CHECK COLUMN	
129	1		6	LIFTS STEEL SHEETS	47250	1.16		
				DUNNAGE 1500#			548.	10
							400.	11
				To Be Delivered At (Time) (Date)				

Terminal Depot 64
1-30-73

THIS SHIPPING ORDER must be legibly filled in in Ink, in Indelible Pencil, or in Carbon, and retained by the agent of Carrier.

THE PROPERTY DESCRIBED ABOVE, IN APPARENT GOOD ORDER, EXCEPT AS NOTED (CONTENTS AND CONDITION OF CONTENTS OF PACKAGES UNKNOWN), MARKED, CONSIGNED, AND DESTINED AS INDICATED ABOVE, WHICH SAID CARRIER (THE WORD CARRIER BEING UNDERSTOOD THROUGHOUT T. IS CONTRACT AS MEANING ANY PERSON OR CORPORATION IN POSSESSION OF THE PROPERTY UNDER THE CONTRACT) AGREES TO CARRY TO ITS USUAL PLACE OF DELIVERY AT SAID DESTINATION, IF ON ITS ROUTE, OTHERWISE TO DELIVER TO ANOTHER CARRIER ON THE ROUTE TO SAID DESTINATION. IT IS MUTUALLY AGREED, AS TO EACH CARRIER OF ALL OR ANY OF SAID PROPERTY OVER ALL OR ANY PORTION OF SAID ROUTE TO DESTINATION, AND AS TO EACH PARTY AT ANY TIME INTERESTED IN ALL OR ANY OF SAID PROPERTY, THAT EVERY SERVICE TO BE PERFORMED HEREUNDER SHALL BE SUBJECT TO ALL THE TERMS AND CONDITIONS OF THE UNIFORM DOMESTIC STRAIGHT BILL OF LADING SET FORTH (1) IN OFFICIAL, SOUTHERN, WESTERN AND ILLINOIS FREIGHT CLASSIFICATIONS IN EFFECT ON THE DATE HEREOF, IF THIS IS A RAIL OR A RAIL-WATER SHIPMENT, OR (2) IN THE APPLICABLE MOTOR CARRIER CLASSIFICATION OR TARIFF IF THIS IS A MOTOR CARRIER SHIPMENT.

SHIPPER HEREBY CERTIFIES THAT HE IS FAMILIAR WITH ALL THE TERMS AND CONDITIONS OF THE SAID BILL OF LADING, INCLUDING THOSE ON THE BACK THEREOF, SET FORTH IN THE CLASSIFICATION OR TARIFF WHICH GOVERNS THE TRANSPORTATION OF THIS SHIPMENT, AND THE SAID TERMS AND CONDITIONS ARE HEREBY AGREED TO BY THE SHIPPER AND ACCEPTED FOR HIMSELF AND HIS ASSIGNS.

Material as covered by this B'll of Lading has been placed on the truck specifically under Driver's Instructions and MUST BE PROTECTED FROM WEATHER IN TRANSIT.

RECEIVED, SUBJECT TO THE CLASSIFICATIONS AND TARIFFS IN EFFECT ON THE DATE OF THE ISSUE OF THIS BILL OF LADING.

Place "X" in block applying to loading conditions under which shipment is transported.

- ☐ MAXIMUM LOAD-HIGHWAY WEIGHT RESTRICTION.
- ☐ MAXIMUM WEIGHT POSSIBLE UNDER DRIVER'S LOADING REQUIREMENTS
- ☐ MAXIMUM POSSIBLE WEIGHT LOADED

COLLECT ON DELIVERY

$ _____

AND REMIT TO
GREAT LAKES STEEL DIVISION
Ecorse (Detroit), Michigan

C.O.D. CHARGE $ _____
TO BE PAID BY CONSIGNEE

Subject to Section 7 of Conditions of applicable Bill of lading, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement: The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

GREAT LAKES STEEL DIVISION

Received $ _____ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

Per _____
(The signature here acknowledges only the amount prepaid.)

Advanced $ _____

"If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding _____ per _____

GREAT LAKES STEEL DIVISION, Shipper
NATIONAL STEEL CORPORATION

J I [illegible]/LLS

B/L No. 1-03-1218

Agent

Per [illegible]

Street post office address of shipper: Ecorse (Detroit), Mich.

FORM C-2206D (REV. 3-68)

243

Address 17516 Dix Melvindale, Michigan
Street number City State

Date Jan 18, 1968

TO:
Brada Miller Freight System
3120 Lonyo
Detroit Michigan

Temperley Expt. 15
W.K
1-30-73

Gentlemen:

Mr. Howard Hardick Social Security No. 417-48-2575 has made application to this Company for a position as Driver and states that he was employed by you as Driver from 1967 to 1968

Will you kindly reply to the inquiry below respecting this applicant? Your reply will be held in strict confidence and will in no way involve you in any responsibility.

For your convenience in replying by return mail, we enclose stamped self-addressed envelope.

Very truly yours,

F. Wiley
Office Manager

1. Is employment record with your Company correct as stated above? 12/1/67 to 12/30/67 (date of last log)
2. What kind of work did he perform? Bleet Driver
3. Had he custody of money or valuables while in your employ? _____
4. If so, were his accounts properly kept? _____
5. Did he operate a motor vehicle for you? Yes
6. If so, what type or types? Semi Tractor & Trailer
7. How many accidents while in your employ? None
8. Was he — Laid off _____ Discharged _____ Resigned XXX
9. What was the reason for his leaving your employ? No reason given-Did not advise was leaving
10. Were his habits sober, honest and proper while employed by you? _____
11. Do you regard him competent for the position applied for? _____

	EXCELLENT	GOOD	FAIR	POOR
Quality of work				
Co-operation with others				
Safety habits				
Personal habits				
Driving skill				

Any other remarks: Was not with company long enough to evaluate

Date: 1/23/67 For Brada Miller Freight System (Name of Company) By Robert S. Campbell

FORM 802

248

In the United States District Court
Southern District of Illinois
Southern Division

(Title omitted in printing)

MOTION FOR SUMMARY JUDGMENT OF BRADA MILLER FREIGHT SYSTEM, INC.

(Filed February 23, 1973)

Comes now defendant Brada Miller Freight System, Inc. and files its Motion for Summary Judgment against defendant Transamerican Freight Lines, Inc. and as grounds for said motion states:

That the pleadings, depositions, answers to interrogatories and exhibits on file show that the indemnity provision of the trip lease, set out in paragraph 3 of **Amended Crossclaim of Defendant Transamerican Freight Lines, Inc.** is contrary to public policy and is unenforceable.

That there are attached hereto certain exhibits to the deposition of Ronald William Temperley taken in this cause, being Exhibits 1, 2, 4, 5, 6, 7, 9 and 10 and referred to in Memorandum of Law in support of this motion. (A typewritten copy of the form of Exhibit 1 is attached for easier reading.)

Wherefore, there being no genuine issue as to any material fact, defendant Brada Miller Freight System, Inc. prays for Summary Judgment and that the Crossclaim of defendant Transamerican Freight Lines, Inc. be dismissed.

(Signature omitted in printing.)

(Certificate of service omitted in printing)

In the United States District Court
Southern District of Illinois
Southern Division

(Title omitted in printing)

MEMORANDUM OF LAW IN SUPPORT OF MOTION OF BRADA MILLER FREIGHT SYSTEM, INC. FOR SUMMARY JUDGMENT

(Filed February 23, 1973)

In this action, Transamerican Freight Lines, Inc. (Transamerican) in its Amended Crossclaim seeks to recover from Brada Miller Freight System, Inc. (Brada Miller) the amount paid by Transamerican to settle plaintiff's claim.

Transamerican alleges that on January 18, 1968 Brada Miller leased a tractor and trailer to Transamerican by means of a "Lease Agreement With Authorized Carriers" purportedly signed by Harold L. Hardrick on behalf of Brada Miller. A copy of the "Lease Agreement With Authorized Carriers," also known as a trip lease, is attached to Brada Miller's Motion for Summary Judgment (Temperly deposition Exhibit 1). Brada Miller denies that Hardrick had authority to enter into the trip lease.

In any event, on January 22, 1968, the tractor and trailer while being operated by Hardrick on a trip from Detroit to

Kansas City, was involved in an accident near Smithboro, Illinois, in which plaintiff was injured. Plaintiff sued both Transamerican and Brada Miller and during trial proceedings Transamerican settled with plaintiff. It is the amount of this settlement (plus expenses) which Transamerican seeks to recover from Brada Miller.

Transamerican's cause of action is based solely on the indemnity provision of the trip lease set out in Transamerican's Amended Crossclaim. It is the position of Brada Miller that the indemnity provision is contrary to the regulations of the Interstate Commerce Commission (ICC), is against public policy and is unenforceable by Transamerican.

Assuming *arguendo* that Transamerican and Brada Miller did enter into a trip lease, such lease was governed by the following provision of the Interstate Commerce Act:

> (e) . . . the Commission is authorized to prescribe, with respect to the use by motor carriers (under leases, contracts, or other arrangements) of motor vehicles not owned by them, in the furnishing of transportation of property
>
> > (2) such other regulations as may be reasonably necessary in order to assure that while motor vehicles are being so used the motor carriers will have full direction and control of such vehicles and will be fully responsible for the operation thereof in accordance with applicable law and regulations, as if they were the owners of such vehicles . . . 49 USC 304(e) (1958).

Pursuant to such delegation of authority the ICC enacted regulations governing these matters.

> 49 C.F.R. § 1057.4 . . . authorized carriers may perform authorized transportation in or with equipment which they do not own only under the following conditions:

(a) **Contract requirements.** The contract, lease or other arrangement for the use of such equipment:

(4) **Exclusive possession and responsibilities.** Shall provide for the exclusive possession control and use of the equipment, and for the complete assumption of responsibility in respect thereto, by the lessee for the duration of said contract, lease or other arrangement, except: (exceptions not pertinent).

Transamerican's printed form of trip lease conforms to the ICC regulation:

4. It is mutually understood and agreed, that the First Party (Transamerican) during the term of this lease shall have the control and responsibility for the operation of said equipment in respect to the public, shippers and Interstate Commerce Commission for such period that said equipment is operated under the terms of this lease as provided in Paragraph 1 hereof.

In a very recent case decided by the U. S. Court of Appeals for the Seventh Circuit, **Alford v. Major, 470 F2d 132 (1972),** the court was faced with a fact situation almost identical to this case.

In **Alford,** Major Truck Lines (Major) leased a truck and driver from Carriers Inc. (Carriers) under a trip lease which provided that Carriers was to indemnify Major from losses suffeed by Major because of third party claims brought against Major as a result of the negligence of the driver furnished by Carriers. Plaintiff was killed in an accident caused by the negligence of the truck driver. The wrongful death action was settled by Major which sought to recover from Carriers under the indemnity provision of the trip lease. In denying recovery, the Court stated:

l.c. 135 "Therefore, since the indemnification clause would permit Major to circumvent the regulations' requirement

that leased carriers exert actual control over the leased equipment and the borrowed drivers, we find that the indemnification clause is unenforceable."

In the present case Transamerican included in its printed trip lease form a paragraph (4.) which sought to incorporate in the trip lease the control provisions of 49 CFR § 1057.4. In addition, Transamerican did in fact exercise complete control over the driver Hardrick and over the tractor and trailer unit as indicated by the following:

Inspection

49 CFR § 1057.4(c) provides:

It shall be the duty of the authorized carrier, before taking possession of the equipment, to inspect the same or to have the same inspected by a person who is competent and qualified to make such inspection and has been duly authorized by such carrier to make such inspection as a representative of the carrier, in order to insure that the said equipment complies with the Motor Carrier Safety Regulations of the Federal Highway Administration of the Department of Transportation.

Ronald Temperly, a district field supervisor of Transamerican's testified in his deposition that Transamerican did in fact have the equipment inspected before the trip in question and that Transamerican completed a vehicle inspection report required by the ICC. (See Temperly deposition, pages 37 and 38; Temperly Deposition—Exhibit 2, attached to Motion for Summary Judgment).

Control of Driver

The driver of the vehicle involved in the accident, Howard Hardrick, furnished Transamerican with Drivers Daily Logs as

required by ICC regulations. (Temperly Deposition pages 39 through 45 and Temperly Deposition Exhibits 4 through 7, attached to Motion for Summary Judgment).

The Drivers Daily Logs in each instance and on the day of the accident (1-22-68) show Transamerican as the carrier. The accident was reported to Transamerican and Hardrick reported his activities to Transamerican for each hour of each day of the trip by means of the Drivers Daily Log.

Transamerican furnished Hardrick with a Trip Record (Temperly Deposition Exhibit 10, attached to Motion for Summary Judgment). The Trip Record shows that Transamerican advanced money to Hardrick for fuel, lodging, food and emergencies (Temperly Deposition page 56). By the Trip Record, Hardrick was instructed "to follow certified routes only." The routes referred to were those assigned to Transamerican and Hardrick was furnished with a copy of Transamerican's ICC authority showing those routes. (Temperly Deposition pages 57 through 59).

ICC Authority

At the time of the accident, the tractor and trailer were being operated from Detroit to Kansas City under authority granted Transamerican by the ICC. (Temperly Deposition page 33). During the trip a placard was affixed to the side of the tractor as per ICC regulations. *49 CFR 1057.4(d)* and *49 CFR 1058*. The placard remained on the truck throughout the trip and read: "Operated by Transamerican Freight Lines, Detroit, Michigan." The permit number assigned to Transamerican by the ICC was printed on the placard. (Temperly Deposition pages 23 through 27).

Transamerican reported this accident to the ICC (Temperly Deposition Exhibit 9). This was done pursuant to ICC regulation and on an accident report form provided by the ICC (Temperly Deposition pages 46 through 47).

Transamerican does not dispute, indeed there could be no dispute, that Transamerican had complete control of the truck and driver and complete responsibility "for the operation of said equipment in respect to the public, shippers and Interstate Commerce Commission" (trip lease, paragraph 4). The trip was made under an ICC permit held by Transamerican.

The attempt by Transamerican to shift its burden and responsibility by relying on the indemnity provision of the lease is contrary to the letter and spirit of the ICC regulations. Enforcement of the indemnity provision would tend to undermine the purpose of the ICC regulations and would be contrary to public policy. The Court in the *Alford* case (supra) fully considered an identical situation and reached a conclusion contrary to the position of Transamerican in the present case.

It is respectfully submitted that on the authority of *Alford v. Major* the Court should sustain Brada Miller's Motion for Summary Judgment.

(Signature omitted in printing.)

(Certificate of Service omitted in printing)

The Opinion and Order of the United States District Court for the Southern District of Illinois Southern Division filed April 25, 1973, are printed in the Petition for a Writ of Certorari at A-1 to A-5.

The Opinion and Judgment of the United States Court of Appeals for the Seventh Circuit is printed in the Petition for a Writ of Certiorari at A-6 to A-13.